



In the Matter of The Common or The Green and Moor End,
Mun Monkton, North Yorkshire (No. 2).

DECISION

This reference relates to the question of the ownership of land known as The Common or The Green and Moor End, Mun Monkton, being the land comprised in the Land Section of Register Unit No. VG 21 in the Register of Town or Village Greens maintained by the former North Riding of Yorkshire 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 Mrs H. Barker and Mr D P Aykroyd each claimed to be the freehold owner 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 Harrogate on 12 May 1977.

At the hearing Mr Aykroyd was represented by Mr L D Mackirdy, solicitor, and the Mun Monkton Parish Council was represented by Major J M B Burchard, its Chairman. There was no appearance by or on behalf of Mrs Barker. I also heard Mr J Holgate, who described himself as a minority member of the Parish Council.

Mr Aykroyd's claim to the land in question is based upon his lordship of the manor of Mun Monkton. The root of his title is a conveyance made 8 April 1947 between (1) Robert John Barker (2) George Hammond Aykroyd, whereby there was conveyed to Col. Aykroyd the manor or reputed manor of Mun Monkton together with an area of land delineated on a plan, which area did not include the land in question. The premises so conveyed passed by divers mesne assignments to Mr D P Aykroyd who by a conveyance made 29 May 1975 between (1) David Peter Aykroyd (2) A B K Pensions Ltd conveyed the land and reserved the lordship of the manor. The land the subject of the reference not having been specifically included in the 1947 conveyance, it could only have passed by virtue of section 62(3) of the Law of Property Act 1925, and then only if it was land appertaining or reputed to appertain or was at the time of the conveyance, demised, occupied, or enjoyed with the manor, or was reputed or known as part, parcel, or member thereof.

No evidence which would bring the land in question within the ambit of section 62(3) of the Act of 1925 was adduced before me. Mr Mackirdy contended that because it is waste land it is vested in Mr Aykroyd as lord of the manor. I am unable to accept this contention. There was no evidence as to the land comprised in the manor of Mun Monkton, and I cannot assume that the manor is coterminous with the parish of the same name, for there are many cases in which a parish comprised more than one manor. However, Mr Mackirdy directed my attention to the evidence regarding this land adduced before Mr Commissioner Baden Fuller in In the Matter of The Common or The Green and Moor End, Mun Monkton (1974), Ref. Nos. 45/D/23 to 28, where the question in issue was whether the land had been correctly registered as common land or as a town or village green. I agreed to read Mr Commissioner Baden Fuller's decision in order to avoid the expense to the parties of recalling the evidence, and I shall give my decision the basis of his findings of fact together with the additional facts disclosed





in the documents adduced in evidence before me.

The lordship of the manor was held in 1860 by Mr Isaac Crawhall until his death on 2 August 1878; thereafter Mr Walter John Crawhall until sometime between 1931 and 1933; thereafter with a possible gap of a year or two Mr Robert John Barker. The documents of title from Mr Barker to Mr Aykroyd were not produced to Mr Commissioner Baden Fuller, but for the purposes of his decision he assumed that Col. Aykroyd succeeded Mr Barker and remained lord of the manor until his death in 1973. However, as the learned Commissioner pointed out, it did not follow from this assumption that Mr Crawhall, Mr Barker, and Col. Aykroyd were successively owners of the land in question.

The learned Commissioner set out in the Third Schedule to his decision particulars of nine acts indicating that the person concerned was or was not the owner of the land in question. These particulars were as follows:-

"(1) Mr Crawhall after a heavy rainstorm would not allow a threshing machine to enter BATTERY FARM (just north of BATTERY POND) across the Unit Land because it might damage the surface.

"(2) Mr Burton remembered his father going round the amusement fair collecting the dues from the Fair Proprietors for the privilege of coming, he understood that his father handed the money to Mr W-J Crawhall and he recollects being told that Mr Crawhall gave some of it, possibly all of it, to the Sports. Mrs E and Mr F Huby in their statement* said the sum was one shilling.

"(3) In 1929 Mr Burton was employed by Captain Whitworth as his horse and cart man. Captain Whitworth had just come to live at the Priory and was minded to lay out the lawns with turf from the Unit Land. He approached Mr W J Crawhall. In the result a meeting of the commons rights holders was held to decide the question; their decision was that Captain Whitworth should be allowed to take the turf provided it was filled in again and levelled up. He accepted, and the place (near Hogg Builders new building) was levelled up and reseeded and is now good permanent pasture.

"(4) After the 1939-45 war, Colonel Aykroyd told the Fair Proprietors (or their representatives) that they were not wanted any more. I make this finding notwithstanding that the only evidence of what Colonel Aykroyd did was hearsay (i.e. that Mr Holgate and Mr Burton were both told independently about it) because they were both satisfied that Colonel Aykroyd did this. Mr Holgate said that his informant (one of the Fair Proprietors) had told him that Colonel Aykroyd mentioned the noise; I infer from the rest of Mr Holgate's evidence that he did not certainly think that the noise was the only or one of the reasons Colonel Aykroyd gave or held at the time, accordingly I make no finding on this point.

"(5) Colonel Woolley's house fronts on the Unit Land and access to his garage is obtained from a track running parallel with his frontage. He found that he could now conveniently get his car out of his garage, so as to align it along the track without backing across the track onto the grass land beyond; such grass land was often very soft so that the car sank into the ground and left an unsightly mark. He consulted Colonel G H Aykroyd; at the time Colonel Woolley believed him to be the Lord of the Manor but did not tell Colonel Aykroyd that he consulted him for this reason. Following the suggestion of Colonel Aykroyd, Colonel Woolley removed a portion of the grass, substituted hard core for the soft ground underneath and replaced the grass on top, so that in result he can now back his car over the grass without sinking it in the grass and (as he does not do this very often) without damaging the grass.





"(6) In about 1958 the Parish Council was approached by the York Area Telephone Manager about some proposed works on the Unit Land. At the time some members of the Parish Council thought Colonel G H Aykroyd had rights as Lord of the Manor; Mr Holgate himself thought his permission was needed for digging turf or felling trees (but not for sports and pastimes). Colonel Aykroyd attended a meeting at which the proposed telephone works were under consideration; he said he was reluctant to take part in any discussion concerning rights on the Village Green (meaning the Unit Land) because he could find no title to them.

"(7) In about 1959 Mr T Hunter thought an elm tree near his house was dangerous and asked the Parish Council if they would cut it down. They consulted Colonel G H Aykroyd for his permission; he said he did not feel he could grant permission as he had not sufficient title. Ultimately Mr Hunter cut down the tree; there was no evidence as to what happened to the timber.

"(8) In about 1963 or 1964 a large poplar on the Moor End part was blown down by the wind. The Parish Council arranged for timber merchants to take this away and received from them £5 for the timber. About the same time another tree (opposite Mr Taplin's house, now owned by Mr Patrick) was thought to be unsafe and so the Parish Council arranged and paid for it to be felled. The Parish Council offered to pay Colonel G H Aykroyd the £5 received for the black poplar timber; but he waived any claim he might have to this £5; and as a result the money was retained by the Parish Council to help offset the higher charge for felling the Taplin tree.

"(9) Mr Holgate after describing the events mentioned at subparagraphs (5), (6), (7) and (8) above, said that from then onwards the Parish Council tended to disregard Colonel Aykroyd as regards any trees and any holes we might dig in the Unit Land. Mr Burton when asked why members of the Parish Council did not suggest approaching the Lord of the Manor about some stone which had been deposited on the Unit Land at about the time Hogg Builders were building their building, said that at the time the Parish Council could not find the Lord of the Manor and that starting about 8 or 9 years ago the Parish Council had assumed custody of the Unit Land. In about 1968 the Parish Council requested (? told) Mr Sadler to pull down a wall which he had recently erected near Syke House encroaching (so the Parish Council considered) on the Unit Land and this he did; this request was made without reference to the Lord of the Manor."

Mr Mackirdy relied in particular upon the acts set out in paragraphs (2) and (4) and submitted that the only evidence to the contrary was Col. Aykroyd's reluctance to assert ownership of the land.

Mr Commissioner Baden Fuller dealt with these matters in his decision, saying:-

"Notwithstanding the informality of the discussions described in paragraphs (6), (7) and (8) above, I am satisfied that Colonel Aykroyd meant and was understood by the Parish Council to mean that he claimed no title to the Unit Land in the sense that he was not legally entitled to permit or object to anything which the Parish Council considered should or should not be done on it; Mr Holgate and Mr Burton (both members of the Parish Council at the relevant times), although they used different words to describe the resulting position as they saw it, were, as outlined in subparagraph (8) agreed that as a result of Colonel Aykroyd's attitude, the Parish Council about 8 years ago (while respecting the grazing rights of the Commoners) in effect took over the Unit Land. I think it unlikely that the word "ownership" was used by Colonel Aykroyd in connection with these matters, but nevertheless from his disclaimer I conclude that he did not consider himself as owner. I think it unlikely that the Parish Council ever considered that they had or could become owners, but nevertheless about 8 years ago they





"while respecting the grazing rights acted as owners, or at least acted as persons entitled to control the Unit Land. Bearing in mind Colonel Aykroyd's disclaimer to the Parish Council and Mrs M Aykroyd's statement mentions his concern only with grazing rights, I conclude that when advising Colonel Woolley about his garage access, he was not asserting his own ownership but considering what course would be least likely to offend those entitled to grazing rights.

"I infer that Colonel Aykroyd when he requested the Fair Proprietors not to come any more as described in paragraph (4) was acting on behalf of the inhabitants, and that they did not want the Fair Proprietors to come any more because the amusements they provided after the 1939-45 war were so much inferior to what had been provided before; if Colonel Aykroyd had then intended to assert his ownership, he would I think have done something more afterwards; any such intention is inconsistent with his 1958, 1959 and 1964 disclaimers.

"Having regard to the amount of the payments mentioned in paragraph (3) [this appears to be a typographical error for (2)] above and the way Mr Crawhill was reputed to have used what he received, I am not persuaded that he was asserting ownership rather than acting on behalf of all the inhabitants generally in preventing the Fair Proprietors from ever establishing a right against the the Commoners and the inhabitants; if as owner he wanted to make a profit from the Unit Land he could have charged more; even assuming that Mr Barker received similar payments (nobody said he did, but it is I think likely) I am not persuaded that his attitude was any different from that of Mr Crawhill; generally I regard the events described in paragraphs (1), (2) and (3) above as being too remote and too uncertain on which to base any conclusion relevant to this case."

While I am not bound by the learned Commissioner's inferences from the primary facts adduced in evidence before him, I would hesitate to differ from his assessment of the qualitative value of the evidence, since he had the advantage of seeing and hearing the witnesses.

For Mr Mackirdy to succeed in his contention that Mr Aykroyd is the owner of the land in question by virtue of being the lord of the manor I should have to be satisfied that the land fell within section 62(3) of the Law of Property Act 1925 at the time of the conveyance to Mr Aykroyd, which was dated 30 November 1970. That conveyance could not, however, operate to convey to Mr Aykroyd more than had been conveyed to his predecessors in title with the lordship of the manor. Mr Mackirdy's researches have taken him back to the will dated 24 January 1874 of Isaac Crawhall, who devised among other properties the manor and manorial rights of Nun Monkton. The effect of that devise would depend upon whether Nun Monkton was at that time a manor or a reputed manor. If it was a reputed manor, the devise would not operate to pass a freehold interest in any specific land: see Scriven on Copyholds (7th ed.), p.5. It is not clear what the status of the manor then was. If it is assumed in Mr Aykroyd's favour that it was not a reputed manor, the devise would have passed the freehold interest in any land parcel of the manor. There is no direct evidence as to what land was then parcel of the manor, so it is necessary to consider whether any inference as to that matter can be drawn from the subsequent evidence. It cannot be said that the evidence does not preclude the possibility that the land was parcel of the manor in 1874, but the evidence is far from conclusive in either direction. After careful consideration I have formed the view that it is insufficient to justify a positive inference that the land was parcel of the manor when Mr Crawhall made his will.

Major Barchard stated that the Parish Council was of the opinion that the land belongs to Mr Aykroyd and not to the Parish Council. I do not, however, consider that I ought to give any weight to this opinion or to the opposing view of the Holgate that the land ought to belong to the Parish Council. My jurisdiction



is to satisfy myself, if I can, whether any person is the owner of the land.

On the evidence available I am not satisfied that any person is the owner of the land, and I shall accordingly direct the North Yorkshire County Council, as registration authority, to register the Nun Monkton Parish Council as the owner of the land under section 8(3) 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 30th day of May 1977

CHIEF COMMONS COMMISSIONER