

COMMONS REGISTRATION ACT 1965

Reference Nos. 5/3/8  
5/3/9

In the Matter of Knutsford Heath,  
Knutsford, Cheshire (No.1)

DECISION

These consolidated disputes relate to the registration at Entry No.1 in the Ownership Section of Register Unit No.C.L.39 in the Register of Common Land maintained by the Cheshire County Council and are respectively occasioned by Objection No.8 made by the Knutsford Urban District Council and noted in the Register on 26th June 1968 and by the conflicting registration at Entry No.2 in the same section of the same Register Unit.

I held a hearing for the purpose of inquiring into the disputes at Chester on 16th May 1973 and 5th, 6th, 7th, 8th and 9th November and in London on 14th, 15th, 16th, 23rd and 26th November 1973. The hearing was attended by Mr. Jeremiah Harman, Q.C. and Mr. Gerard Ryan, of counsel, for Midland Bank Executor and Trustee Co.Ltd (hereafter referred to as "the Bank"), the applicant for the registration; by Mr. W.R. Stewart-Smith, of counsel, for the Objectors; and by Mr. David Widdicombe, Q.C. and Mr. John Monckton, of counsel, for Nether Knutsford Freeholders, the applicants for the conflicting registration.

The land the subject of this reference consists of four areas divided from each other by roads. Two of these areas lie to the north and two to the south of Northwich Road. The two areas to the south of the road are occasionally referred to in documents as "the Small Heath", but it is agreed by the parties that for the purposes of these proceedings there is no significant difference between these various areas, which will be referred to hereafter collectively as "the Heath".

The Bank bases its claim to be the owner of the Heath upon a conveyance made 4th August 1956 between (1) Norman Hudson, Kenneth Selwood, Eric John Wykeham Ellis, and James Stewart Ross (vendors) and (2) the Bank (purchasers) and the receipt of rents and profits by the Bank since the execution of that conveyance and by the vendors and their predecessors in title previously.

The vendors were the personal representatives of Maurice, Lord Egerton of Tatton, who died on 30th January 1958. The Heath is shown on one of the plans referred to in the conveyance as being included in the parcels. It is agreed by the parties to these proceedings that whatever estate or interest Lord Egerton of Tatton had in the Heath is now held by the Bank.

The recorded history of Knutsford goes back to Domesday Book, where Knutsford appears as a rural manor with apparently nothing exceptional about it. By the end of the thirteenth century the Domesday manor had been divided into two manors, known respectively as Nether Knutsford and Over Knutsford (otherwise Knutsford Booths or Boys). The Heath is situated in the manor of Nether Knutsford and forms one of a number of areas of land known collectively as the commons and wastes of the manor.



On 3rd August 1292 William de Tabley, then lord of the manor of Nether Knutsford, took the first step towards the creation of what in modern parlance would be called a "new town" by obtaining a charter from the Crown, which authorised him to hold a weekly market and an annual fair in his manor. Shortly afterwards, as a part of this venture, de Tabley created a number of freehold burgage tenements with lands annexed, and granted to the burgesses a charter setting out their rights, which included estovers in the form of household and haybold, turbary and common of pasture for so many cattle as the land could support in winter, and their duties, which included rents of 12d a year and suit of court.

De Tabley's feoffment was to hold of him and his heirs as immediate lords. Such a feoffment was contrary to the Statute of Quia Emptores (Statute of Westminster III (18 Edw.I, stat.1)), which was then two years old, though it may well be that de Tabley had conceived his project earlier and found himself overtaken by the passing of the statute for the protection of superior lords. However this may have been, de Tabley's feoffment to the burgesses gave rise to a complaint by de Tabley's feudal superior, Richard de Massy, that it was prejudicial to him and his heirs. This complaint led to an agreement whereby de Tabley granted that de Massy should have half of the profits of the market and fair and that half of the lands and tenements held or in the future to be held in burgage with their lands annexed should be held of de Massy immediately, but saving to de Tabley the money rents and certain services. This agreement was carried into effect by a charter whereby de Tabley granted to de Massy and his wife nineteen of the burgages, together with one croft and one house held by life tenure.

It thus appears that de Tabley created thirty-eight freehold burgages. It cannot, however, be assumed that the holders of these thirty-eight burgages were the only freeholders in the manor of Nether Knutsford. The manor was in existence before de Tabley's feoffment and may well already have had freehold tenants, to whose number de Tabley added thirty-eight holding by burgage tenure involving the payment of a fixed money rent, which would be more attractive to urban tradesmen than the labour services owed by the holders of agricultural land. Sir Peter Leycester, writing in 1667 (Historical Antiquities (published 1672), Book II, p.299), said that there were then "above forty Charterers" in Nether Knutsford. Presumably he meant by "Charterers" the successors in title of the thirty-eight burgesses of 1292, together with some subsequently enfeoffed (as was contemplated in the compromise agreement between de Tabley and de Massy), as distinct from other freeholders of the manor. This would account for the marked disparity in numbers between the "above forty" charterers and the persons found described as "freeholders" in later documents. It would, in my view, be wrong to infer that the lord of the manor created a large number of new freeholds after 1667.

The evidence so far considered reveals nothing unusual about the manor of Nether Knutsford, apart from the fact that some of the freeholders held by burgage tenure. So far as the ownership of the waste land of the manor is concerned, there is nothing to rebut the prima facie presumption that the lord was the owner of all the waste lands within the manor: see



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Doe d. Dunraven v. Williams (1836), 7 C.& P. 332. Mr. Widdicombe's case is that the proper inference to be drawn from the evidence next to be considered is that the prima facie presumption is rebutted and that the ownership of the Heath is now in the freeholders of the manor either solely or jointly with the Bank as successor to the lord of the manor.

The modern history of the manor begins with an indenture dated 22nd October 1734. By this time what may be termed the "de Tabley" and the "de Massy" interests in the manor had long been reunited and were held by the lord of the manor, John Egerton. Egerton was the first party to the indenture. The parties of the second part were 109 persons, some of whom were described as of Nether Knutsford and some as of other places, all of whom were collectively referred to as "the said Charterers or Freeholders". It was recited that Egerton was the lord of the manor and proprietor of the market of Nether Knutsford and that the parties "besides the said John Egerton" were severally seized in their several demesnes of fee simple or of some good and sufficient estate in tail or for life or lives of and in the several messuages and tenements in the manor of Nether Knutsford. It was then recited that several controversies and disputes had lately arisen between Egerton and the Freeholders touching the rights and liberties of Egerton in and to the common and waste ground within the manor and touching the rights, easements, commons, estovers, and privileges of the Freeholders in and to the commons or waste ground and concerning an exemption claimed by them severally from toll in the fairs and markets within the manor and other matters thereafter mentioned. It is not necessary for the purposes of these proceedings to consider further the question of exemption from toll and other matters.

So far as the commons and wastes were concerned, the parties settled their differences in the following manner:-

A. The Freeholders acknowledged that Egerton and all those whose estates he had of and in the several ancient messuages or tenements in the manor from the time whereof the memory of man was not to the contrary had for himself and themselves and their tenants -

(1) common of pasture for cattle without number levant and couchant on the several tenements in and upon all the wastes and commons in Nether Knutsford as appurtenant to his tenements; and

(2) the right or common of estovers, which right was described in detail.

B. Egerton acknowledged that each of the several Freeholders and all those whose estate he had of and in his respective messuage and tenement in the manor from time whereof the memory of man was not to the contrary had for himself and themselves and his and their tenants -

(1) common of pasture for cattle without number levant and couchant on his tenement in and upon all the wastes and commons in Nether Knutsford as appurtenant to his tenement; and



(2) the right or common of estovers, which right was described in detail.

The indenture further witnessed that in consideration of 5/- paid by the Freeholders or some of them and in consideration of the foregoing grants and confirmation made and granted to Egerton by the Freeholders, Egerton ratified and confirmed to each of the Freeholders and his heirs and assigns the rights previously mentioned to hold to each and every of them and his heirs for ever.

In the absence of any definition of the "several controversies and disputes" which had arisen between Egerton and the Freeholders, it is not possible to attach much value to the indenture as evidence of the respective rights of the parties before they composed their differences. It is, however, to be observed that the rights which were confirmed to Egerton were stated to be in respect of his "ancient messuages and tenements". This expression is also used in respect of the property of the Freeholders and appears to indicate that any controversy or dispute as to Egerton's rights of common related not to his demesne lands, but to freehold lands which he or his predecessors in the lordship of the manor had purchased. As a matter of strict law such a purchase would extinguish any rights of common formerly appurtenant to the freehold, although it was recognised that in such circumstances the lord or his tenants could exercise a quasi-right of common: see Musgrave v. Inclosure Commissioners (1874), L.R.9 Q.B.162, per Blackburn, J. at pp.174-5. It is, therefore, possible that it was such quasi-rights which were the subject of dispute.

In the indenture there was a final "sweeping-up" clause, which provided that "any other rights liberties privileges matters and things not herein mentioned and specified shall remain and be as the same were before the making hereof or would have been if these presents had never been made".

Mr. Widdicombe argued that the indenture shows that the ownership of the commons and wastes was one of the matters in dispute.

I find myself unable to accept this argument. It is not explicitly stated in the indenture that the question of ownership was one of the "several controversies and disputes". The fact that it was not included amongst the terms of the compromise tacitly indicates to me that it was not in dispute. I cannot find in this indenture anything which is inconsistent with the prima facie presumption that Egerton was the owner of the land in his capacity as lord of the manor. To my mind the evidence of the indenture on this matter is neutral. I now turn to the second limb of Mr. Widdicombe's argument that the evidence of events subsequent to 1734 established that the Freeholders were the owners either solely or jointly with the lord of the manor.

By 1741 John Egerton had been succeeded as lord of the manor by Samuel Egerton. In that year an Act (14 Geo.II, c.5) was passed for making the chapelry of Nether Knutsford (then part of the parish of Rostherne) a separate and distinct parish and for erecting a parish church. The new church was to be erected in a place or close called the Tentry Croft,



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belonging to Samuel Egerton. Egerton did not, however, give this land, for it was provided that the Commissioners and Trustees for executing the Act should allot to him and his heirs such part of the common or waste ground within the manor of Nether Knutsford as would be a full satisfaction and equivalent for such part of Tentry Croft as should be used for the church and church-yard and, in addition to this allotment, a parcel of ground lately inclosed and taken in by him from the common or waste ground and used as a way between Nether Knutsford and Tatton was also ratified and confirmed to and vested in him and his heirs and assigns.

At first sight this Act could be read as indicating that the common or waste ground was not in the ownership of Samuel Egerton as lord of the manor, for if it had been, it would have been superfluous to provide for the allotment of part of it to him and to vest in him another part which he had already inclosed. It is, however, to be observed that it was a common practice for inclosure commissioners to be authorised to allot to the lord of the manor part of the waste land to be inclosed. Examples of this practice are to be found in Musgrave v. Inclosure Commissioners, supra, at p.164. and in In the Matter of the Lord's Waste, Winterton-on-Sea, Norfolk (1972), No.25/3/12. In such a case the right of the lord of the manor in and to the soil of the waste land by virtue of his lordship was extinguished and replaced by a new statutory title. As for the vesting of the land which had already been inclosed the weight to be attached to the word "vested" is somewhat lessened by the use also of "ratified" and "confirmed", for Egerton could have approved part of the common or waste ground so long as he left sufficient for those entitled to rights of common. I therefore cannot regard the provisions of this Act as indicating that the ownership of the commons and wastes of the manor had been severed from the lordship of the manor by 1741.

At the beginning of the nineteenth century a practice of selling parts of the commons and wastes of the manor was initiated. The first of these sales was effected by an indenture dated 2nd February 1806, whereby the lord of the manor, now William Egerton, and fifty-two other persons, who were seized of certain ancient messuages, lands, and hereditaments in Nether Knutsford and in right thereof were jointly entitled to common of pasture upon a parcel of common or waste ground called the Brickkiln Heath, conveyed the land to the trustees of the will of Samuel Egerton. The greater part of the purchase price (£452.10.0) was paid to nine of the freeholders and the remainder was paid in sums of 10/- each to William Egerton and the other forty-three freeholders, though it is possible that these payments of 10/- were merely notional, for the endorsement of the deed states: "Consideration Money £452.10s.0d." On the same day the nine freeholders who received the sum of £452.10.0 executed a deed poll that the money should be held on trust to pay the interest to the Overseers of the Poor of the Township of Nether Knutsford in aid of the poor rates.

The next disposal of part of the commons and wastes of the manor of which there is evidence was to the lord of the manor himself. This was effected by a deed poll dated 16th February 1827 executed by fifty-five persons who, together with the lord of the manor, now Wilbraham Egerton, were stated to be seized and possessed of divers messuages, tenements, lands, and hereditaments in Nether Knutsford and were entitled to common of pasture and other commonable rights as such freeholders. The fifty-five freeholders



did "remise, release and for ever quit claim unto the said Wilbraham Egerton and his heirs all the estate right title interest use trust property claim and demand whatsoever both at law and in equity of them the said parties hereto and each and every of them respectively of in to or out of all and singular the parts or shares of them the said parties hereto of and in" two pieces of common or waste land. The consideration money (£444) for the purchase of what were described as "the several shares of the parties hereto of and in" the said two pieces of common or waste land was to be paid to seven of the fifty-five freeholders, who were described as constituting the Committee appointed at a general meeting of the freeholders held on 24th November 1826 for superintending the application of the purchase money, or to such other persons constituting any subsequent Committee appointed from time to time by the freeholders at any general meeting called by public notice in the Church and by the Town's Crier at least five days previous to such meeting to be held in the Court Room in Nether Knutsford. There was also a sum of 5/- payable to each of the fifty-five freeholders, but this also may have been only a conveyancing fiction.

The committee of freeholders appointed on 24th November 1826 was an innovation, for the first page of the account book is headed: "1st Week beginning Monday 27th Nov. 1826". This book shows amounts paid to workmen for unspecified work, but its relationship to the deed poll of 27th February 1827 is shown by a summary drawn up at the end of the twenty-seventh week, by which time £270.17.3½ had been spent, leaving a balance of £150 in the bank at 4% interest and £23.2.8½ in hand out of "Purchase Money £444".

The balance left out of the £444 was described as the "Freeholders' Fund". An account of this continued to be kept in the following years, when the payments were comparatively small. It is not until 1832 that the accounts contain any indication of the work for which the payments were made. In that year there are payments stated to be for "work on Heath near wall" and "work at Sandpit and Heath".

On 21st April 1840 Charles Cholmondeley, who was one of the Committee appointed in 1826 and who, as appears from the account book, had been acting as treasurer of the Freeholders' Fund, recorded in the book that he had paid to Wilbraham Egerton, the Rev. Robert Clowes, and John Long the balance which was then £153.11.2, they being in future the "Trustees for the Management of the above fund belonging to the Freeholders of Nether Knutsford and accountable for the Expenditure thereof". Thereafter the accounts are headed "John Long, Treasurer" until the book ends in 1883.

The next disposal of part of the commons and wastes was made by an indenture made 6th October 1848 between (1) Wilbraham Egerton (2) John Long and (3) Egerton Leigh, Edward Jeremiah Lloyd, and Harry Mairwaring, three of the Justices of the Peace for the County of Chester. This recited that the several persons having freehold estates within the manor and township of Nether Knutsford had or claimed to have rights of common of pasture over a piece of land proposed to be conveyed to the County Justices for the erection of a lock-up house. It was further recited that at a meeting of the freeholders held on 12th July 1848, pursuant to public notice, at which seven named persons were present, it was resolved, after reading a letter from



Mr. Egerton approving of the proposal, that the land be offered for £50 and that "if accepted the money be paid to Mr. Long to be held by him unto the future disposal of the Freeholders and that the lord of the manor convey the land free of right of common". Mr. Egerton then, in consideration of the sum of £50 paid to Mr. Long, as lord of the manor and "so far as he lawfully can and may and to the extent of and according to his estate and interest therein and not further or otherwise", conveyed the land to the three Justices "freed and absolutely discharged from all rights of common of every description of or belonging to the said Wilbraham Egerton". It seems somewhat remarkable that there is no similar discharge from the rights of common belonging to the freeholders. Mr. Long duly received the £50 and entered it in the account book on 18th October 1848.

During the first half of Mr. Long's treasurership the Freeholders' Fund was allowed to accumulate, the only item of expenditure being £150 paid in 1845 for gas pillars. The next payment was on 15th March 1859 for measuring and mapping land and on 10th May 1861 for measuring and mapping Shaw Heath.

The significance of these payments for measuring and mapping is made clear by the minutes of a meeting of the freeholders held at the Court House on 28th May 1861, when it was resolved "unanimously with one exception" that the waste land at Shaw Heath should be sold and that it should be offered to John P. Legh, Esq. for £200. At an adjourned meeting held on 11th June 1861 it was reported that Mr. Legh's agent had agreed to the purchase and it was ordered that a draft conveyance from William Tatton, Lord Egerton of Tatton (Wilbraham Egerton's eldest son, created Lord Egerton of Tatton in 1859) and the freeholders to Mr. Legh should be prepared. Although the conveyance was to be from Lord Egerton of Tatton and the freeholders, the decision to sell the land and to fix the price was taken at a meeting of the freeholders. Among those present at the meeting was Lord Egerton of Tatton's agent, but whether he was representing Lord Egerton of Tatton in his capacity as a freeholder, or as lord of the manor, or both, is not stated.

The conveyance to Mr. Legh was by an indenture made 18th December 1861 between (1) William Tatton, Lord Egerton of Tatton (2) John Long and (3) John Pennington Legh. The form of this indenture is similar to that of 1848 whereby Wilbraham Egerton conveyed the land for the lock-up house. Mr. Long duly received the £200 and entered it in the account book on 17th May 1862.

On 19th August 1861 there was another meeting of the freeholders at which the Trustees of the Freeholders' Fund were authorised to sell the waste land in Mere Heath Lane and "such other pieces of Waste belonging to the Freeholders" as they may deem eligible for present sale and add the proceeds to the Fund. This is the first occasion of which there is evidence that the freeholders asserted that the waste belonged to them alone. Lord Egerton of Tatton's agent was present at the meeting and is not recorded to have dissented from this assertion. Indeed, on this occasion Lord Egerton of Tatton himself was in effect the purchaser, as appears from the conveyance dated 23rd January 1863. The conveyance was to the trustees of the will of Wilbraham Egerton, who had died on 25th April 1856, with the consent of Lord Egerton



of Tatton as tenant for life. The conveyance recited that the several persons having freehold estates within the manor and township of Nether Knutsford had or claimed to have rights of common of pasture over the land as part and parcel of the commons and waste lands of the manor. It then recited the resolution passed on 19th August 1861 and Lord Egerton of Tatton conveyed the land in terms similar to those employed in the indentures of 1848 and 1861 in compliance with the request and direction of the Rev. Robert Clowes and John Long, two of the freeholders made parties to the deed. Mr. Long received the purchase money (£200), which was entered in the account book on 23rd January 1863.

On 23rd August 1884 there was a conveyance in what may be described as the opposite direction. The trustees of the Egerton Settled Estates, with the consent of Wilbraham, 2nd Lord Egerton of Tatton, in consideration of £100 paid by the trustees of the Freeholders' Fund, conveyed certain property in King Street, Nether Knutsford, to the trustees of the Freeholders' Fund on trust for the Lord of the Manor and Freeholders of Nether Knutsford.

The last sale of any substantial part of the commons and wastes of the manor appears to have been on 24th June 1907, when Wilbraham, now Earl Egerton of Tatton, as lord of the manor, and the Earl and eleven other named persons described as being the major part in value of the freeholders or persons having rights of common in upon or over the commons or waste lands of the manor conveyed two plots of land to the Knutsford Urban District Council and one plot to the trustees of the Egerton Settled Estates, the consideration money being paid to the trustees of the Freeholders' Fund.

Finally, on 23rd May 1938 there was an agreement between (1) Maurice, Lord Egerton of Tatton, lord of the manor of Nether Knutsford, and the Freeholders of Nether Knutsford by the hand of their Clerk and (2) the Cheshire County Council for the sale of a few square yards of land for a road improvement. There was no monetary consideration for this agreement.

While none of these nineteenth and twentieth century transactions relates to the Heath, they throw light on the general legal position with regard to the commons and wastes of the manor, which include the Heath. It may be that from 1861 onwards there was some faulty conveyancing in that the successive Lords Egerton of Tatton were but tenants for life of the Egerton Settled Estates and that the lordship of the manor, being an incorporeal hereditament, was vested in the trustees of the settlement, whereas the documents were drafted on the assumption that the Lord Egerton of Tatton of the day was personally the lord of the manor, as to the general public he would have appeared to be and as, so it seems, he thought himself to be, for in a letter dated 10th March 1888 the then Lord Egerton of Tatton wrote that he would be willing, "so far as I am able, as the tenant for life to raise no objection as Lord of the Manor", to certain proposals regarding the common. However, it does not appear to me that this defect, if defect there was, in the conveyancing of the parts of the common and wastes disposed of has any bearing upon the question of who was and is the owner of one of the remaining parts of the commons and wastes.

It is clear from the documents that there has been a continuity of administration from 1627, when the sum of £444 was used as the commencing





capital of the Freeholders' Fund, to the present time. By 1954 a greater antiquity had become attributed to the Freeholders as a body, for in a statutory declaration made in connection with the sale of part of the King Street property, which had been purchased in 1884, Mr. G.L. Hartley said:-

"1. SINCE October One thousand nine hundred and forty eight I have been and I am now the Clerk to the Committee of the unincorporated body known as the "Nether Knutsford Freeholders" and prior to my appointment as such Clerk one or other of the partners for the time being in my present firm of Sedgley Caldecutt and Company Solicitors of Knutsford aforesaid has for the last forty years and upwards acted as Clerk to the said Committee.

x x

"3. THE said unincorporated body has been in continuous existence since the year 1734 or earlier. Its members consist of the persons for the time being owning estates of freehold within the Manor or former Manor of Nether Knutsford. Its affairs are managed and conducted by a Committee elected annually by such Freeholders in General Meeting. To the best of my knowledge information and belief no foundation deed or scheme exists defining the objects of the said body or the manner in which its funds and the income thereof ought to be applied. By virtue of custom the date of the origin of which cannot now be ascertained the said income is disbursed by resolution of the Committee for purposes of general benefit and amenity of the inhabitants of Knutsford at large. The said body is not recognised by the Charity Commissioners as a charity subject to their jurisdiction."

Save that it is not possible to trace any juristic link between the indenture of 1734 and the foundation of the Freeholders' Fund in 1827, and that it may be overstating the matter to describe the Freeholders as "an unincorporated body", Mr. Hartley's declaration appears to be an accurate summary of the position. Much of the income of the Fund has been applied to the maintenance and improvement of the Heath, which is now in effect a place of public recreation.

As I have already indicated, I can find nothing in the evidence down to 1734 to rebut the prima facie presumption that the lord of the manor was the owner of the commons and wastes of the manor. In the subsequent period the only express assertion to the contrary in the documents so far considered is that in the minute of 19th August 1861, in which the waste land in Mere Heath Lane and other pieces of waste are described as belonging to the freeholders, although such an assertion is implicit in the minute of 26th May 1861 recording the decision of the freeholders to sell the waste land at Shaw Heath. It is, however, necessary at this stage to consider another nineteenth century statement regarding the respective rights of the lord of the manor and the freeholders.

This statement is contained in a document purporting to be the minutes of a special meeting held on the Heath on 28th January 1888, at which



Lord Egerton of Tatton, Mr. John T. Smith, his agent, the Vicar of Knutsford, and five other persons, presumably all freeholders, were present. This document was found among the records relating to the Freeholders' Fund and a copy was made of it by Dr. J.K. Walley on 13th September 1966. It is unfortunate that the document cannot now be found but, having heard Dr. Walley's evidence regarding it, I accept that it existed and that he made an accurate copy of it.

Even if the original of these minutes had been produced, it would still have been open to some adverse comment. Although the copy is headed: "Certified copy from the Freeholders Committee Minute Book", the document did not in fact come from a minute book, but was a loose sheet of paper. There is no surviving minute book for the year 1828, though there may well have been one, for the minute book beginning in 1892 is entitled "Minute Book No.2". Furthermore, the copy does not indicate that the original was signed at a subsequent meeting, so it may have been but a draft and superseded by a later version which was duly entered in the now lost minute book. It would clearly be unsafe to attach great weight to the statements in this document. Nevertheless, it probably represents in general terms the substance of the discussion at the meeting.

The reason for holding the meeting was that Lord Egerton of Tatton had complained that his rights as lord of the manor had been infringed by the erection of a protecting rail. The portion of the minute upon which Mr. Widdicombe relied is as follows:-

"A discussion ensued. It was concluded that the Heath belonged to the Freeholders of Knutsford of whom Lord Egerton was one and this was abundantly proved by the fact that every piece of Common Land which had up to this time been alienated had been done so by the Freeholders and the purchase money for such lands received by them thus forming the Freeholders Fund.

"It was admitted that as Lord of the Manor, Lord Egerton had rights on the Heath which no one else possessed and the Freeholders and Commoners of Knutsford were prepared to respect these Manorial rights to the fullest extent in any scheme which might be carried out".

What credence should be given to these assertions in 1861 and 1883 that the freeholders were the owners of the commons and wastes of the manor? I do not accept Mr. Harman's contention that they should be disregarded because they were assertions by the freeholders in their own documents regarding their own rights. That objection is, in my view, vitiated by the fact that on each occasion the Lord Egerton of Tatton of the day or his agent was present at the meeting and seemingly acquiesced in the freeholders' assertion of ownership. On the other hand, I find it impossible to accept these assertions as correct statements of the legal position when they are considered with the other evidence relating to the disposal of parts of the commons and wastes of the manor.

The statement in the minutes of 28th January 1888 that: "every piece of Common Land which had up to this time been alienated had been done so by the



Freeholders and the purchase money for such lands received by them thus forming the Freeholders Fund" is not correct. The first such alienation of which there is evidence was that of 1806. On that occasion the purchase money was held on trust for the Overseers of the Poor, the Freeholders' Fund not having been founded until 1827. Furthermore, on no occasion did the Freeholders convey the land. On each occasion the lord of the manor was a party to the conveyance, and, without going into the niceties of conveyancing, the highest that it could be put in the freeholders' favour was that the land was conveyed by them and the lord of the manor jointly.

All the evidence points to the alienations' having been joint ventures by the lord of the manor and the freeholders. The separate interests of the parties would have been of little monetary value by the beginning of the nineteenth century, and the only way in which the freehold value in possession of any part of the commons and wastes could be realized would be by joint action. Since this joint action would result in the production of a sum of money far in excess of the total which the parties could have obtained separately, it would not be surprising if, instead of distributing it among themselves (which would have necessitated the proof of each freeholder's title), they applied it to some purpose beneficial to all concerned. This they did in 1806 by holding the purchase money in trust for the Overseers of the Poor and in 1827 by the foundation of the Freeholders' Fund, which has always been applied for the general benefit of the inhabitants of Knutsford.

Having administered the proceeds from sales of the commons and wastes for a substantial time, it is perhaps not surprising that the freeholders came to regard themselves as entitled to dispose of the remaining commons and wastes, which would augment the Freeholders' Fund, and that the lord of the manor, being willing to forego any pecuniary interest which he may have had in the matter, acquiesced in this view.

It seems to me that by 1861 the freeholders' position was such that they were for all practical purposes in the position of owners of the commons and wastes of the manor. It is true that the lord of the manor had to join in any conveyance, but his agreement to any proposed transaction had become almost as formal as the Royal Assent to an Act of Parliament, save only that he had a voice in the matter as being a freeholder himself. But, although the freeholders had become de facto owners of the commons and wastes, I cannot find in the documents so far considered any ground for holding that the freeholders had ousted the lord of the manor from his de jure ownership.

However, most of the documents so far considered related to parts of the commons and wastes of the manor other than the Heath and therefore only throw indirect light on the ownership of the Heath. Direct information as to the Heath has to be sought in the other records relating to the Freeholders' Fund.

With the exception of the missing Minute Book No.1, the records of the Freeholders' Fund cover the whole period from its foundation in 1827 down to the present time. These records show that, after paying the administrative expenses and the cost of repairs to the property held as an investment, almost the whole of the available income has been spent on the maintenance and



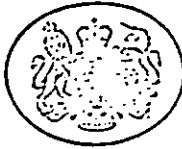
improvement of the Heath. In addition to paying for work on the Heath, the Fund has also paid the wages of a functionary, who has enjoyed from time to time various titles, such as Common Looker and Heath Inspector.

The minute books (most of which are written in execrable hands) are full of the details of the day-to-day administration of the Heath, which it would be tedious to reproduce. Much of the administrative work has been concerned with the use of the Heath by various organisations for the playing of organised games and for functions, such as sports, fetes, and shows. Such organisations have applied for and obtained permission from the lord of the manor and the Freeholders' Committee. In some cases the lord of the manor has given his consent first, subject to the approval of the Freeholders' Committee, and in other cases vice versa. After the sale in 1959 the Freeholders' Committee granted permission, subject to the permission of the Bank, and vice versa. Payment has not been demanded in all cases, but where there has been any payment, it has been made to the lord of the manor or the Bank, as the case may be. In particular, payments have been required for the erection of tents. It is upon such payments that Mr. Harman relies as the receipt of rents and profits by the Bank and its predecessors in title.

To my mind, there is nothing in this modern administrative history which is inconsistent with the continuance of the ownership of the soil of the Heath with the lordship of the manor and its conveyance to the Bank. Indeed, the freeholders themselves seem to have taken this view. The minute books contain a number of statements regarding the relative rights of the freeholders and the lord of the manor. One of the most emphatic is by the Clerk to the Trustees dated 5th March 1894, which commences: "The legal owner of the Common Land situate in the township of Nether Knutsford is undoubtedly the Lord of the Manor". The current minute book contains a number of references to the dichotomy between the freeholders and the owners of the freehold of the Heath, e.g. on 19th October 1961 and 9th May 1962, while on 2nd May 1963 there was an express statement that "the Freeholders had no rights in claiming compensation for subsidence as they were not the owners of the Heath". By contrast, the first assertion of ownership by the freeholders in the current minute book does not appear until 20th January 1967, when the question of registration under the Commons Registration Act 1965 was raised.

Between this and the last previous reference to the question of ownership in 1963 Dr. Walley had made his discovery of the minutes of the meeting of 23rd January 1888. Maybe it was this which brought about the volte face on the part of the freeholders. If so, it illustrates the danger inherent in reading a document out of its context. Once this document is restored to its context it becomes, in my view, of very little moment. I attach no more importance to it than I do to the statement by Mr. L. Caldecutt, the Clerk to the Freeholders, in a letter dated 13th March 1914 that the lord of the manor is "also the Freeholder of the Common Land", or to that by Mr. H. Caldecutt, his successor in the Clerkship, in a letter dated 23rd May 1930 that "the Knutsford Heath is vested in Lord Egerton of Tatton as Lord of the Manor and the Freeholders of Nether Knutsford".

Finally, the following modern documents contain assertions as to the ownership of the Heath:-



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12th February 1940. Notice by the Cheshire War Agricultural Executive Committee concerning the cultivation of the Heath addressed to the Freeholders of Knutsford as owners.

12th December 1940. Similar notice by the Cheshire County Council addressed to the Clerk to the Freeholders' Committee.

9th June 1943. Agreement between the Freeholders and the Commissioners of H.M. Works and Public Buildings for the payment of compensation for laying a pipe line upon the Heath.

25th November 1943. Notice of taking of possession acknowledged by the Clerk to the Freeholders as owner.

Schedule of condition of Heath as at the date of requisition. Owners stated to be: Lord of the Manor - Lord Egerton of Tatton; Knutsford Freeholders' Committee. Signed by the Clerk to the Freeholders and by the agent to Lord Egerton of Tatton.

15th August 1950. Deed of grant between Lord Egerton of Tatton and the North Western Gas Board for laying gas mains on the Heath.

17th and 18th November 1952. Agreements between Lord Egerton of Tatton and the Merseyside and North Wales Electricity Board for the laying of underground cables across the Heath. These agreements have been continued by the Bank.

5th February 1953. Consent by Lord Egerton of Tatton to the placing by the Knutsford Urban District Council of two electric lighting standards on the Heath.

26th January 1966. Wayleave from the Bank to the Merseyside and North Wales Electricity Board for the laying of an underground cable on the Heath.

The most that can be said of these documents is that they are statements by Lord Egerton of Tatton on the one side and by the Freeholders on the other asserting ownership of the Heath. As already indicated, I do not find such assertions of assistance. It does not appear upon what materials or upon what reasoning such statements were founded. One can at least be certain that they were not preceded by an examination of all the available evidence with the assistance of five counsel during the course of eleven days.

Mr. Widdicombe urged upon me that the Freeholders had acted as if they were a corporation and that I ought to presume a lost grant, as in the case of In re the Free Fishermen of Faversham (1887), 36 Ch.D. 329, or, in the alternative, I ought to presume a lost grant to trustees for the Freeholders, as in Haigh v. West, [1898] 2 Q.B.19. This I find myself unable to do. The object of such presumptions is to find a legal basis for what has in practice been done without any apparent legal basis. It is to explain the inexplicable. There is no room for such presumptions in a case, such as the present, where the evidence is exceptionally clear and detailed.



For those reasons I confirm the registration.

Finally, I turn to the question of costs. I heard these disputes at the same time as the conflicting dispute No.5/D/10 and dispute No.5/D/11 relating to the registration in the Rights Section of the Register Unit. In the dispute relating to rights of common I am confirming the registration with modifications. I could deal with the costs in the disputes separately. In that event I should award costs to the Bank in the ownership disputes and against the Bank in the rights dispute. Since all or substantially all the evidence was relevant to both ownership and rights, it seems to me that the best way of dealing with the matter is to make no order as to costs as between the Freeholders and the Bank.

However, when the question of costs was discussed before me the parties shared with me the disadvantage of not knowing what the outcome of the proceedings would be. I shall, therefore, not make any formal order as to costs at this stage. If the Bank and the Freeholders do not agree that the matter can be fairly disposed of in the manner indicated, I shall be willing to hear further representations as to costs and then to make any order or orders which may appear to be proper in the light of such further representations.

This leaves for consideration the position of the Urban District Council. The Council was concerned only to oppose the Bank's ownership registration and not to support that of the Freeholders. The intervention of the Council increased the Bank's costs to some extent, and I have it in mind that this should be recognised by the Council's making a contribution towards the costs incurred by the Bank. Since it would appear that the total costs are equally attributable to these consolidated disputes on the one hand and the rights dispute on the other (with nothing separately attributable to the conflicting ownership dispute No.5/D/10), my present view is that the Council should pay one-third of the costs incurred by the Bank in these consolidated disputes on County Court Scale 4. I would certify the case as being fit for two counsel and I would also direct that the Registrar on taxation is not to be bound by the amounts appearing in the Scale in respect of the items referred to in the County Court Rules, Order 47, r.21 (2).

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 24<sup>th</sup> day of January 1974

  
Chief Commons Commissioner