



In the Matter of Pine Moss and Fenton
Moss, near Faugh, Hayton, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Pine Moss and Fenton Moss, near Faugh, Hayton, being the land comprised in the Land Section of Register Unit No. OS 193 in the Register of Common Land maintained by the Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Mr J Wilson, Mrs M Wilson and Mr D Wilson and Mrs E L Pearse claimed to be the freehold owners 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 Carlisle on 6 February 1980.

At the hearing Mr J Wilson, Mrs Wilson and Mr D Wilson were represented by Mr D Mellor, Solicitor, and Mrs Pearse was represented by Mr P James, Solicitor, who stated that Mrs Pearse was concerned only with her shooting rights over the land.

The land comprised in the Register Unit consists of two separate areas, the western one described as Pine Moss, but also known as White Hoo and White Faugh Moss, and the eastern one described as Fenton Moss.

So far as the eastern portion is concerned there is no difficulty. It was conveyed to Mr and Mrs J Wilson and Mr D Wilson by a conveyance made 9 December 1970 between John Arthur Blaylock and Nancy Mary Joan Blaylock his wife (2) Joseph Wilson and Maggie Wilson his wife and David Wilson as part of a farm known as Fenton Lane End. This conveyance did not, however, include the western area comprised in the Register Unit.

What is known of the western area is somewhat obscure. The earliest mention of it which Mr Mellor was able to produce was in an indenture made 3 February 1899 made between (1) John Holliday (2) Richard Sewell, the parcels of which include "Share in White Who Moss", stated to have an area of 2 ac. and identified as part of OS No. 459. OS No. 459 has an area of about 8 ac. and is described on the Ordnance Survey map as "Whitefaugh Moss". There is nothing in the indenture to identify the situation within OS No. 459 of the 2 ac. referred to. There was also conveyed to Mr Sewell the land on the eastern and southern sides of OS No. 459.

In the years 1902 and 1907 Mr Sewell took two further conveyances which included references to Whitefaugh Moss. These were:- (a) 1 March 1902 (1) Thomas Fisher (2) R Sewell. All Share and interest (if any) of T Fisher in Fenton Moss or the moss called White Faugh or White Who Moss. (b) 14 October 1907 (1) Joseph Fisher (2) R Sewell, Share, allotment or parcel of land in and upon White Faugh Moss otherwise White Who Moss (OS No. 459 pt) and containing 2 ac. or thereabouts and all other (if any) the share, allotment, estate and interest of J Fisher in and upon White Faugh Moss otherwise White Who Moss. Again there is nothing in the conveyance to identify the situation in OS No. 459 of the 2ac. referred to.

(1909-910)

The field book which was prepared for the purposes of the Finance Act 1910 states that Whitefaugh Moss had an area of 8ac. Ir.5p. and describes it as "undivided



allotments of no grazing value - unsafe for stock". The occupier is stated to be "R Sewell and Others" and the owner "R Sewell and Others Devonshire Street, Carlisle".

By an indenture made 4 November 1918 Mr Sewell conveyed to John Robert Air the land on the eastern and southern sides of OS No. 459, which he had acquired on 3 February 1899, the share and interest (if any) in White Faugh Moss of T Fisher, which he had acquired on 1 March 1902, and the share, allotment or parcel of White Faugh Moss containing 2ac., and the other (if any) share, allotment, estate and interest of J Fisher, which he had acquired on 14 October 1907, but he did not convey the share in White Who Moss which he had acquired on 3 February 1899.

By an indenture made 19 July 1921 Mr Air conveyed to George Whitefield the younger the land on the eastern and southern sides of White Faugh Moss together with such right or interest as he had in the woodland and moss to the south-west of the land conveyed. Although White Faugh Moss is not named, it seems clear that this is the moss to which reference is made. All the premises conveyed by this indenture were conveyed by Mc Farlane and Whitfield Ltd to John Sowerby by a conveyance made 8 February 1934. In his turn J Sowerby conveyed these premises to himself and his daughter and two sons by a deed of gift made 1 June 1943.

Meanwhile Mr J Sowerby had acquired by a conveyance made 19 July 1941 from John Forster the land adjoining White Faugh Moss on the west together with such rights as Mr Forster may have been entitled to in Whitefaugh Moss. These premises were conveyed by Mr Sowerby to himself and his daughter and two sons by a deed of gift made 20 March 1943.

Thus by 1 June 1943 Mr J Sowerby and his daughter and two sons were the owners of the land to the west, south and east of Whitefaugh Moss together with the interests in the moss which had been conveyed by Mr Sewell in 1918 (which did not include the interest in the moss which Mr Sewell had acquired in 1899) and by Mr Forster in 1941.

By a conveyance made 21 May 1965 between (1) Christopher Sowerby (2) John Arthur Blaylock and Nancy Mary Joan Blaylock his wife, trading as J and N Blaylock, there was conveyed to J and N Blaylock a farm known as Fenton Lane End, which comprised, with other land, the land on the west, south, and east of Whitefaugh Moss. This conveyance contains no mention of Whitefaugh Moss.

It seems clear that Whitefaugh Moss was owned in divided shares. The Sowerby family acquired some of these shares, though there is nothing to show that they acquired all of them. However that may have been, none of the shares was mentioned in the conveyance by Mr C Sowerby to J and N Blaylock in 1965. It does not appear to me that any of the general words to be deemed to be included in that conveyance by virtue of section 62 of the Law of Property Act 1925 are apt to convey the ownership of Whitefaugh Moss with the land adjoining it, even if Mr C Sowerby had it to convey.

I must therefore say that on this evidence I am not satisfied that any person is the owner of Pine Moss or Whitefaugh Moss and it will therefore remain subject to protection under section 9 of the Act of 1965.

I am, however, satisfied that Mr J Wilson, Mrs M Wilson, and Mr D Wilson are the owners of Fenton Moss, and I shall accordingly direct the Cumbria County Council as



registration authority, to register them as the owners of that land under section 8(2) 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

22nd

day of

February

1980

Chief Commons Commissioner