



COMMONS REGISTRATION ACT 1965

Reference No. 211/U/4.

In the Matter of Cotherstone Regulated
Pasture, Cotherstone, Teesdale, D., Durham

DECISION.

This reference relates to the question of the ownership of land known as Cotherstone Regulated Pasture, Cotherstone, Teesdale District being the land comprised in the Land Section of Register Unit No. CL.75 in the Register of Common Land maintained by the Durham 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. M.J. Hunter gave information about the ownership of the land in question; no person claimed to be the freehold owner of the land 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 Bishop Auckland on 29 April 1975. At the hearing (1) Mr. James Haldane, Mr. Francis George More and Mr. James Martin Haldane, being the executors of Rt. Hon. Timothy Patrick, 16th Earl of Strathmore and Kinghorne (he died on 13 September 1972) were represented by Mr. A.H. Charlesworth solicitor of Williamson & Co., Solicitors of Newcastle-upon-Tyne; (2) the Public Trustee were also represented by Mr. Charlesworth; and (3) Mrs. M.J. Hunter secretary of the Field Reeves of Cotherstone Regulated Pasture attended in person.

The land ("the Unit Land") comprised in this Register Unit is a tract stretching from a point near Cotherstone Village westsouthwest to the boundary between County Durham (here formerly North Riding) and Westmorland and being (as I Scale the Register map) a little over 3 miles long (apart from a narrow strip leading to the Village) and for the most part about 1 mile wide. In the Rights Section there are 37 entries of 39 rights to graze for varying numbers of gaits or stints.

Mr. Charlesworth produced a copy of the Cotherstone Moor Inclosure Award dated 17 May 1867. By it, the Valuer after making some allotments and declaring that he had sold parts of the land to be enclosed, set out "all the residue of the said Cotherstone Moor to be used as a regulated pasture" and made various declarations with regard to it, including a declaration that he had allotted 4,449³ sheep stints or gates (which he defined) and a declaration that he reserved for the Lord of the Manor all mines and minerals stone and other substrata under the said Cotherstone Moor except as therein after mentioned, with full power for him to search for, work and carry away the same as therein provided. The said Award was authorised by the Annual Inclosure Act 1863 (26 & 27 Vict. c.79).

Mr. Charlesworth referred me to section 116 of the Inclosure Act 1845 and produced a copy of an order made by the High Court of Justice on 12 June 1961 in proceedings of which the short title and reference No. is "Re Cotherstone Moor Regulated Pasture: 1961 P 678"; by the Court declared that upon the true



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construction of the Law of Property Act 1925 and in the events which at the commencement of the said Act had happened; the regulated pasture immediately before the commencement of the said Act constituted an open space of land within the First Schedule Part V paragraph 2 of the Act and became and was then vested in the Public Trustee on the statutory trusts therein mentioned.

On the evidence outlined above, I am satisfied that the Public Trustee is the owner of the Unit Land.

Mr. Charlesworth claimed that I should in the Ownership Direction which I am by section 8(2) of the Act of 1965 required to give to the registration authority qualify the direction as regards the Public Trustee's Ownership by limiting it to the surface and by including a direction to the registration authority to register the Executors as owners of the mines and minerals pursuant to section 116 of the 1845 Act and the above quoted reservation in the 1867 Award. Mr. Charlesworth referred me to Thomson v St. Catherines College, Cambridge (1919) A.C. 468 and 120 L.T. 481, and contended that if the Executors were not registered under the 1965 Act, the minerals would or might under paragraph (b) of section 1 (3) of the Act become vested in a person who might claim them or alternatively in the absence of any registration, the Executors might be prevented from working the mines and minerals.

Paragraph 24 of the Commons Registration (General) Regulations 1966 (S.I. 1966 No 1471) provides in effect that the registration authority shall enter a note in the Land Section of a claim to any right mentioned in subparagraph (2); this subparagraph includes "where ownership of any minerals in or under the land is severed from the ownership of the surface, the ownership of those minerals and all rights incident thereto". Model Entry No. 13 set out in Schedule 2 to the Regulations show how such a claim is to be noted.

In my opinion the provisions above referred to in the Regulations for a "claim" to the ownership of minerals to be entered in a "note" to the Land Section are inconsistent with the registration authority ever making on the application of any person an Entry in the Ownership Section of that person's ownership of the minerals; so a Commons Commissioner could never under Sections 7 and 6 of the Act be concerned to inquire into a dispute as to mineral ownership. It would I think make nonsense of the Register if a Commons Commissioner could under Section 8 of the Act direct a registration relating to minerals which could never be made under section 4.

That the Regulations should deal with minerals differently from the surface in an Act, relating to rights of common, is I think reasonable, because as a general rule where minerals are severed from the surface, a right of common would not affect the owner of the minerals. In my opinion the above referred to provisions of the Regulations are within power to make regulations conferred by section 19, see section 3 (1) and section 4 (1) which deal with ownership registrations.



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I conclude therefore that I have no power to give any direction to the registration authority relating to minerals such as was claimed on behalf of the Executors. Accordingly I express no opinion as to the evidence offered about mineral ownership.

Being satisfied that the Public Trustee is the owner of the land, I shall accordingly direct the Durham County Council as registration authority to register the Public Trustee as the owner of the land under section 8(2) of the 1965 Act.

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 9th — day of July 1975

A. A. Baden Fuller

Commons Commissioner.