



COMMONS REGISTRATION ACT 1965

Reference No. 211/U/91

In the Matter of Waskerley Park, in  
Muggleswick, Stanhope and Wolsingham,  
Derwentside and Wear Valley District,  
Durham

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") hereinafter defined of the land known as Waskerley Park in Muggleswick, Stanhope and Wolsingham being the land comprised in the Land Section of Register Unit No. CL66 in the Register of Common Land maintained by the Durham County Council. Of the land ("the Unit Land") in this Register Unit, the part ("the Fenwick Part") lying to the south of the lines A-B and C-D on the Register map is registered in the Ownership Section at Entry No. 1 as in the ownership of Mrs Marjori Newton Fenwick and this registration being undisputed has become final. The Referred Part is the part of the Unit Land which lies to the north of the said lines A-B and C-D and 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 the Trustees of the Lambton Estate (their Solicitor's letter of 11 February 1985) said that they intended to apply for their registration as owners. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

The former Chief Commons Commissioner Mr G D Squibb QC held a hearing for the purpose of inquiring into the ownership of the Referred Part at Durham on 7 March 1985. At the hearing the Trustees of the Lambton Estate were represented by Mr C J Thompson, solicitor of Wilkinson Marshall Clayton & Gibson, Solicitors of Newcastle-upon-Tyne.

Mr Squibb when he came to write his decision in this Matter, noticed that on 26 July 1968 the Trustees of the Lambton Settled Estate applied for the registration of a right to graze 700 sheep and followers over the whole of the Unit Land, and that this registration became final on 1 August 1972, and observed that by virtue of section 10 of the Commons Registration Act 1965 it is conclusive evidence that the Trustees were entitled to the right to graze as at 1 August 1972 and that this is inconsistent with the vendor's manorial rights conveyed to the Trustees on 22 May 1967 having included the freehold of the land and that it therefore appeared to him that the Trustees' proper course may be to apply for a note of their rights and interests as lords of the manor (in that capacity) other than the ownership of the land to be made in the Land Section of the Register under regulation 24(1). (2) (d) of the Commons Registration General Regulations 1966. In these circumstances a letter dated 12 March 1985 to this effect was written to the Trustees' Solicitors saying that since no reference was made to the said Rights Section registration at the hearing, he the Chief Commons Commissioner would be glad to have their observations regarding this either in writing or at an adjourned hearing in London.

In letters dated 12 and 19 April 1985 the Solicitors requested that as the Trustees were the only persons with registered rights over the Unit Land the part owned by them be removed from the Land Section of the Register as the rights are extinguished by unity of ownership; alternatively they requested that there be an adjourned hearing so that the Trustees' case can be argued.



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Letters dated 15 and 25 April 1985 were sent to the Solicitors saying that the Chief Commons Commissioner was not satisfied that the Trustees' rights over the land had been extinguished by unity of possession and was not prepared to direct their registration as owners but he was prepared to hear argument in London before he retired on 30 April or if that was not convenient the case could be reheard by another Commissioner. No further observations and no arguments were offered before 1 May 1985.

In these circumstances I held an adjourned hearing for the purpose of further inquiring into the question of the ownership of the Referred Part at Durham on 5 February 1986. At the hearing Sir Arthur James Robert Collins and Mr David Michael Dixon as the Lambton Trustees were represented by Mr S G Maurice of counsel instructed by the said Wilkinson, Marshall, Clayton & Gibson.

The Unit Land is a tract containing (according to the Register) about 1,000 acres; it surrounds but does not include Waskerley Reservoir, the dam, the filter beds and ancillary banks and structures and other land below the Reservoir. The Fenwick part comprises about half the Unit Land being that south of the line A-B running from the southwest side of the Unit Land to the west end of the Reservoir and south of the line C-D being the line of Waskerley Brook from the east side of the excluded Reservoir lands to the east side of the Unit Land. The Referred Part is the part north of the line A-B and of the line C-D, exclusive of a narrow strip being the site of the now disused mineral railway from the Park Head Depot near the southwest boundary of the Unit Land to Waskerley, now a small number of dwelling houses and other buildings but formerly including a (busy I suppose) mineral railway junction; also exclusive of another narrow strip which from the map appears to have been a track (? not now used) leading to the Reservoir from the road (B6278, from Stanhope to Shotley Bridge). The whole of the Referred Part is south of the road ("the Castleside road") fit for public motor traffic which runs from the said B6278 road eastwards to Castleside; the distance of the Referred Part from this road varies between a few feet (at two places) and about 600 yards (at the east end). In the Rights Section at Entry No. 1 is a registration made in 1970 on an application dated 26 July 1968 of the Trustees of the Lambton Settled Estate of a right "to graze 700 ewes and followers over the whole of the land contained in this register unit"; such right is not in the Register expressed to be attached to any land.

At the hearing, Mr D S Gray FRICS of Smith Gore, Chartered Surveyors and Land Agents of Corbridge, Northumberland gave oral evidence in the course of which he said (in effect):- On behalf of his firm he had been personally concerned with the Lambton Estate for 27 years; the Estate Office was at Lambton Park, Chester-le-Street. The Estate includes land in or around Muggleswick and Waskerley. His father (Mr David Alexander Gray) was resident agent and was also until he retired (1975) one of the Trustees. He (the witness) produced an epitome of the title of the Trustees to this part of the Estate and the documents referred to in it are as specified in the Schedule hereto; he explained the plans attached to the March 1966 and the May 1967 conveyances. The March 1966 plan shows the "Muggleswick Estate" then acquired by the Trustees being (as appears in the conveyance) 11,552 acres altogether, of which 3,792 acres are "TENANTED: Farms, Land alone, Houses etc, and Land on long lease", and of which the rest are "Woodlands, Miscellaneous Waste, Moorlands and Land at Waskerley";



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these "Moorlands" (7,410 acres) are the greater part of the tract called Muggleswick Common containing 5,514 acres, being Register Unit No. CL75. The May 1967 plan includes the whole of the Referred Part except a triangular area which is not far from Castleside Road, which has sides of about 175 yards, 498 yards and 645 yards and which is included in the March 1966 plan. Some land to the west of the Referred Part, mostly west of the B6278 road is within the May 1967 plan as also are extensive areas east of the Referred Part being Skaylock Hill and other lands south of Waskerley.

The greater part of the hearing was taken up with legal argument by Mr Maurice as to the effect of the May 1967 conveyance by Mrs Fenwick and a conveyance dated 14 January 1966 to her of 2,603 acres by the Church Commissioners for England, particularly the parcels which by reference to the First Schedule were expressed in the May 1967 conveyance as follows:-

The Vendor's manorial rights (other than the minerals) as Lord of the Manor over Waskerley Park and part of Muggleswick Common as verged red on the said plan containing an area of 1,407 acres or thereabouts BUT EXCEPT AND RESERVED ... EXCEPT AND RESERVED ALSO the titulor or any other manorial incidents or rights which do not arise out of or are not attached exclusively to the said property hereinbefore referred to....".

and in the January 1966 conveyance as follows:-

"The Commissioners manorial rights (other than the minerals as hereinbefore referred to) as Lord of the Manor over Waskerley Park and part of Muggleswick Common as are verged red on the plan attached hereto containing an area of two thousand six hundred and three acres or thereabouts BUT EXCEPT AND RESERVED ... ALSO EXCEPT AND RESERVED the Titular or any other manorial incidents or rights which do not arise out of or are not attached exclusively to the said property hereinbefore referred to ....".

Mr Maurice submitted that under the May 1967 conveyance made by Mrs Fenwick and the January 1966 conveyance by the Church Commissioners to her, the Lambton Trustees became entitled to the Manor and accordingly under section 62 of the Law of Property Act 1925 the Lambton Trustees became entitled under these conveyances to the Referred Part as being "pastures .... wastes .... commons ...." within subsection (3). It is perhaps likely that before 1966 the Church Commissioners were "Lords of the Manor" of which Waskerley Park and part of Muggleswick Common were part, but the words in the parcels "the Commissioners manorial rights ... as Lord of the Manor over Waskerley Park and part of Muggleswick Common as are verged red ..." cannot in my view properly be read as including the manor itself; and this view accords with the exception above quoted; further a "Park" is not included in subsection (3). If Mrs Fenwick never became herself entitled to the Manor, she could not in May 1967 convey it to the Lambton Trustees; the above quoted parcels of the 1967 conveyance of her having rights "as Lord of the Manor" cannot enlarge the operation of the January 1966 conveyance.

But I accept Mr Maurice's submission that the words above quoted from both the conveyances are wide enough to convey all the estate and interest which the conveying parties had power to convey. Notwithstanding the similarity of the words used in the conveyances with the words used in regulation 24 quoted by the former Chief Commons Commissioner, there is I think nothing in either of them preventing the Lambton Trustees claiming an absolute interest in all the land within the May 1967 conveyance plan.



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Further the finality of the Rights Section registration and the conclusiveness attributed to it by section 10 of the 1965 Act, even if they are some evidence against the ownership claim, do not I think as a matter of law preclude the claim. When registrations first became permissible under the 1965 Act, there were many official warnings about the loss which might result to persons who failed to register rights of common when they should; so that persons who were uncertain whether their use of any land was in exercise of a right of common or in exercise of a right of ownership, to be on the safe side either registered a right of common without registering any ownership or registered both a right of common and ownership. I decline to ascribe to Parliament an intention that persons during the short period when registrations were permissible and during which the position under the 1965 Act for many people was obscure, by choosing to register the lesser right lost the greater.

So at the hearing I concluded that the points noticed by the former Chief Commons Commissioner and communicated to the Trustees' Solicitors in March 1985 would not, as he seemed to think possible, in law preclude effect being given to an ownership claim by the Trustees; and I so stated indicating to Mr Maurice that he for the benefit of his clients need proceed no further.

After the hearing I remembered that under section 8 of the Commons Registration Act 1965 a direction to register ownership could not be made under subsection (2) unless a Commons Commissioner is "satisfied that any person is the owner of the land", and that I had at the hearing proceeded on the basis that it was enough for the former Chief Commons Commissioner to be satisfied conditionally on certain questions of law raised by him being determined in a way favourable to the Lambton Trustees and that I had so determined them. When coming to write my decision I doubted whether the Act contemplated a procedure by two Commissioners acting in succession and therefore considered whether I at the hearing was personally "satisfied". As to this at the hearing I only had the documents specified in the Schedule hereto. It is well established that a conveyance of land expressed to be of it for an estate in fee simple is some evidence of the ownership of the conveying party for that estate, see *Blandy-Jenkins v Dunraven* 1899 2Ch 121 and *Malcomson v O'Dea* (1863) 10 HLC 593; but a conveyance of land for such estate and interest as the vendor has power to convey is not within the principles set out in these two authorities. Accordingly neither the January 1966 nor the May 1967 conveyance are any evidence of the ownership of the Church Commissioners and Mrs Fenwick in the absence of any evidence of surrounding circumstances, of which I had none except for the April 1966 statutory declaration made by Mr Collenette. But his declaration is only doubtfully satisfactory in that although he says that the Church Commissioners received the rents and profits from 1872 to 1966, he does not say what the rents and profits were or how he could go so far back as 1872. I have not overlooked the 1985 confirmatory deed; although this served the purpose possibly useful to the Lambton Trustees of precluding any adverse claim by the Church Commissioners or Mrs Fenwick, it cannot I think operate to give the 1966 and 1967 conveyances an evidential value which they do not otherwise possess; the 1985 deed itself having been made recently and after these proceedings were contemplated is not by itself satisfactory evidence of the conveying parties being the owners either in 1985 or now.

With the above considerations in mind I inspected the Referred Part on 11 April 1986 being attended by Mr D S Gray who gave evidence at the hearing as aforesaid and by Mr Adrian Brown employed by Smith Gore. We motored along the relevant part of the Castleside Road and down the track ending at Wakerley Reservoir; the



road being more or less along the ridge provides a good view of the Referred Part. Mr Gray pointed out sheep grazing, the butts used for shooting and the line (about 20 ft wide) of unusual grass marking the position of the 36 inch gas main recently laid across Muggleswick Common and the Referred Part (near its east end) and the prominent above the ground and by the road gas pressure gauge and emergency valve. He also indicated the line of the electricity way-leave next mentioned, and these lines together with the line of the gas main were marked by Mr Brown on my copy of the register map. As to the sheep, Mr Gray said (in effect): they were grazed from Gold Hill Farm (16 stints), Dene Howl Farm (24 stints) Healeyfield Farm (42 stints) and Springwell Farm (16 stints) which farms are all owned by the Lambton Trustees, farmed by their tenants and situated between Castleside and Waskerley as indicated in the paper and plan DSG/10 which he handed to me. As to the shooting, Mr Gray explained that the first acquisition by the Lambton Trustees of lands in the Muggleswick area (being additional to land owned by them in other areas) was effected by the March 1966 conveyance for sheep farming, for its forestry content, and for the grouse shooting; the Referred Part within the May 1967 conveyance was an addition acquired for the grazing and grouse shooting, to what they then held under the 1966 conveyance; ever since these acquisitions the Moorland comprised in the March 1966 conveyance, the Referred Part had been used for grouse shooting, two men having been employed throughout the whole year to keep it in order and look after the grouse; there are 4 lines of butts (stone or wood); there are shoots (driven birds) approximately 10 times a year (they fly over the valley: "the Waskerley Drive"). As to the electricity way-leave, Mr Gray produced an agreement (DSG/11) dated 11 August 1970 by which he on behalf of the Trustees of the Lambton Estate had agreed such way-leave with the North Eastern Electricity Board. As to the gas main, Mr Gray said that he had personally been concerned with the negotiation with British Gas as to the laying of the main which was as far as the Estate was concerned mainly over the CL75 land although it in part did go over the Referred Part; for this grant of a permanent easement to British Gas over the CL66 and CL75 lands the Lambton Trustees received £7,690. Shooting from the butts was mostly by parties selected by the Trustees or by Lord Lambton on their behalf, although on occasions days of shooting for others had been arranged for payment. As to the rents and profits received by the Church Commissioners it was within his personal knowledge since 1956 that before the 1966 sale the Church Commissioners had let at a rent the shooting of the land they sold in 1966 to Mrs Fenwick.

There was at the hearing no opposition to the ownership claim then made by the Lambton Trustees and I consider that I can properly treat what I saw on my inspection and what Mr Gray then said as evidence. About the said small triangular area no question was raised by the former Chief Commons Commissioner: it is included in the parcels of the conveyance of 4 March 1966 which also include the greater part of the CL75 land and which unlike the parcels of the conveyance of 14 January 1966 and 22 May 1967, are not extraordinary: I am satisfied that the Lambton Trustees are the owners of this area. As to the rest of the Referred Part:- Quite apart from any grazing done by their tenants justifiable if the Lambton Trustees had no absolute interest in the Referred Part, under the grazing right registered in the Rights Section, I find that they have by the grouse management and shooting done by them, their beneficiaries and licensees and by their granting of a permanent gas easement and of electricity way-leaves been in actual possession of the Referred Part as absolute owners by use and reputation. Possession is by law some evidence of ownership for an estate in fee simple; but by itself it is not satisfactory because the documents of the possessors might



indicate an estate or interest less than absolute ownership. However in this case for the reasons above set out the documents of the Lambton Trustees are all consistent with → an absolute ownership. In these circumstances I am satisfied that the Lambton Trustees are the owners of all the Referred Part therefore pursuant to Section 8(2) of the 1965 Act I shall direct Durham County Council's registration authority to register Sir Arthur James Robert Collins and Mr David Michael Dixon both of 20 Essex Street, Strand, London (being the Trustees of the Lambton Settled Estate) as the owners of the Referred Part.

At the hearing Mr Maurice repeated the claim made in the said April 1985 letter that the Referred Part should be removed from the Land Section as the right (of common registered) has been extinguished by unity of ownership; in effect submitting that I should in these proceedings in some way modify Land Section registration. The reference by the County Council leading to these proceedings was by them made under section 8 of the 1965 Act; under such section I am concerned only with ownership, being as defined in section 22 "ownership of a legal estate in fee simple"; in my opinion I have no jurisdiction in these proceedings to make a modification as suggested. Under the 1965 Act, the jurisdiction of a Commons Commissioner to consider ownership of land is limited to land which is registered under the Act. I would therefore have no jurisdiction to consider the ownership of the Referred Part if it was not so registered; if I had good reason to suppose that the registration of the Referred Part under the Act had always been void from the start, I would not have considered ownership at all; the Lambton Trustees cannot I think consistently with having asked a Commons Commissioner to be satisfied as to their ownership, at the same time asks him to treat the registration as having always been void. The inclusion of the Referred Part in the Land Section registration appears from the register to have been consequential on the Rights Section Registration made on the application of the Lambton Trustees; the registration being undisputed, has → become final; this finality must have been consequential on section 7 of the <sup>1965</sup> Act; a dispute about such finality is not under the Act capable of being referred to a Commons Commissioner by anyone. In these circumstances I consider I should express no opinion about the claim made in the April 1985 letter, and merely draw attention to *Corpus Christi v Gloucestershire* 1983 QB 360 in which the Court of Appeal considered a somewhat similar claim.

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.

SCHEDULE  
(Documents)

Part I: the north pieces

(1)  
AJRC/2

4 March 1966

Conveyance by Church Commissioners for England to Arthur James Robert Collins, David Alexander Gray and the Hon Richard Oliver Stanley of the Muggleswick Estate containing about 11,552.013 acres as set out in the Schedule thereto, being the property lying within the blue verge line on the attached plan.



- (2) 19 April 1966 Statutory declaration by Donald Adolphus Collette as to the receipt by the Ecclesiastical Commissioners for England and the Church Commissioners for England as their successors of the rents and profits before 4 March 1966.  
AJRC/4

Part II: the south pieces

- (3) 14 January 1966 Conveyance by Church Commissioners for England to Marjorie Newton Fenwick of: "The Commissioners manorial rights (other than the minerals as hereinbefore referred to) as Lord of the Manor over Wakerley Park and part of Muggleswick Common as are verged red on the plan attached containing" about 2,603 acres ...
- (4) 24 May 1966 Statutory declaration by Donald Collette as to the receipt by the Ecclesiastical Commissioners for England and the Church Commissioners for England as their successors in title of the rents and profits from 27 November 1872 to 14 January 1966.  
AJRC/3
- (5) 22 May 1967 Conveyance by M N Fenwick to A J R Collins, D A Gray and the Hon R O Stanley of "the Vendor's manorial rights (other than the minerals) as Lord of the Manor over Wakerley Park and part of Muggleswick Common as verged red on the attached plan containing about 1,407 acres.  
AJRC/1

Part III: as to the whole of the Referred Part

- (6) 4 March 1985 Deed of confirmation made by the Church Commissioners for England, and M J Fenwick and others to the A J R Collins and D M Dixon supplemental to the said two conveyances of 14 January 1966 and 22 May 1967 confirming the same as effective to transfer all the estate and interest in the land therein described in fee simple.



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- (7) 7 April 1975 Deed of retirement by which D A Gray was discharged from the Trusts of (among other conveyances) those dated 4 March 1966 and 22 May 1967 and Messrs A J R Collins and R O Stanley continued as Trustees.
- (8) 11 December 1978 Deed of appointment by which David Michael Dixon was appointed a new Trustee of (among other conveyances) the said conveyances of 4 March 1966 and 27 February 1977 to act with the said A J R Collins and R O Stanley.
- (9) 15 November 1983 Certificate of death on this day of Richard Oliver Stanley.

Dated this 6th — day of June 1986

*A. A. Baden Fuller*

Commons Commissioner