



In the Matter of Emsay Moor, Emsay, Craven D

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DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL 243 in the Register of Common Land maintained by the North 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 the Trustees of the Chatsworth Settlement claimed to be the owners of the land in question ("the Unit 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 ~~Skipton on 29 October 1982~~.

At the hearing Mr J M Sheard, Chartered Surveyor and Agent of the Chatsworth Estate, appeared on behalf of the Claimants, and Mr J M Garbott, Clerk to Emsay with Eastby Parish Council also attended. Mr Garbott told me that there was no evidence to support a claim to ownership by the Parish Council. Ms D Smith, an applicant for Rights, was present but did not claim ownership.

Mr Sheard produced (1) an examined Abstract of Title (2) a photocopy of a Conveyance dated 21 March 1961. The Abstract of Title relates to the major part of the Unit land, the remaining part being the section ("the western section") which lies to the west of Stirton Pits and which is the subject of the 1961 Conveyance.

(1) By an Indenture dated 30 August 1897 the eighth Duke of Devonshire mortgaged the major part (with other property) to the Scottish Widows Assurance Society ("the Society"). Following the death of the eighth Duke in 1908 and by virtue of the provisions of his Will, a Deed of Appointment dated 10 August 1909 and an Indenture of Conveyance dated 6 December 1909 ~~the~~ ~~residuary~~ ~~freehold~~ estate of the eighth Duke became vested in the ninth Duke beneficially. By an Agreement dated 3 November 1926 the ninth Duke agreed to sell (inter alia) all his lordships manors and land in the County of York to the Chatsworth Estates Company ("the Company"): and by an Indenture dated 1 July 1929 the Society released the property comprised in the 1897 Mortgage to the ninth Duke on trust for the Company in fee simple. After the death of the ninth Duke in 1938, letters of Administration of his estate with the Will annexed limited to the properties comprised in the 1926 Agreement were granted to the tenth Duke as syndic of the Company for its use and benefit. In December 1950 this grant was replaced by a similar grant to the eleventh Duke.

In the meantime, by an Agreement dated 26 November 1950 the Company agreed to sell the properties comprised in the 1926 Agreement to the predecessors of the present Chatsworth Settlement trustees: although the consideration payable under the Agreement was satisfied, no conveyance of the properties was executed. I am concerned with the ownership of the legal estate in the Unit land and though the trustees may be entitled as trustees to the whole equitable interest, it appears



that the legal estate is outstanding in the eleventh Duke by virtue of the grant to him made in 1950.

(2) As to the western section, this was included in the property Conveyed on sale by the 1961 Conveyance to the Duke of Buccleuch and the Duchess of Devonshire, on trust for sale. By virtue of two subsequent Deeds of Appointment dated respectively 24 October 1973 and 9 July 1976 the present trustees for sale are T E S Egerton and I H L Melville. On this evidence I am satisfied that they own the western section and that the eleventh Duke of Devonshire is the owner of the remainder of the Unit land: and I shall accordingly direct the North Yorkshire County Council, as registration authority, to register them respectively as such owners 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

19 November

1982

*L. J. Morris Smith*

Commons Commissioner

