



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/339

In the Matter of land containing 872.8 acres or thereabouts
known as Yockenthwaite Moor Buckden

DECISION

This reference relates to the question of the ownership of the land known as Yockenthwaite Moor, Buckden being the land comprised in the Land Section of Register Unit No. CL.174 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.

Claimants

Following upon the public notice of this reference Mrs Kate Mason, Miss Laura Mason and Mr John Mason claimed to be interested in the land in question and subsequently their claims were transferred to and pursued by the National Trust.

Hearings

I held hearings for the purpose of inquiring into the question of the ownership of the land at Skipton on 20th May 1987 and 12th November 1987, Chief Commons Commissioner Mr Peter Langdon-Davies held a hearing on 9th May 1989 and finally I held a hearing on 4th October 1990.

Attendances

The hearing on 20th May 1987 was attended by Mr J Raine, Miss L Mason, Mrs Kate Mason and Mr John Mason.

The hearing on 12th November 1987 was attended by Mr John Mason and Mr J M Sharman, Solicitor of Stamford Bridge representing The National Trust.

The hearing on 9th May 1989 was attended by Mr J J Pearlman of Pearlman Grazin & Co, Solicitors of Leeds representing the National Trust and Miss Judy Richmond Assistant Land Agent of the National Trust.

The hearing on 4th October 1990 was attended by Mr Pearlman, Miss D Fairburn, Land Agent of the National Trust and Miss Richmond.

Registration

The land was registered as common land in consequence of the Rights application of David Leslie Mudd. This registration, being undisputed, became final on 1st August 1972.

There were originally three entries in the Rights section of the Register, as follows:

No.1 David Leslie Mudd (as Tenant) the right to graze 119½ sheep attached to Top Farm

No.2 Thomas Hird and Anthony Hird (as Tenants) the right to graze 726 sheep attached to Yockenthwaite Farm

No.3 William Anthony Graham Watson and David Moray Watson (as Owners) rights of turbarry, shooting and to take minerals and to graze 725 sheep attached to Yockenthwaite Farm.



Entries No 2 and 3 were duplications, one being made by the Tenants and the other by the Owners of Yockenthwaite Farm. Consequently Entry No.2 was cancelled, the other two entries becoming final. Nevertheless the registration by the Messrs. Hird remains of interest for reasons later appearing.

Ineffective Hearings

At the hearing on 20th May 1987 Mrs Kate Mason told me that John Mason and Miss L Mason were trustees for shares of Top Farm, Yockenthwaite. She said that by a Deed of 1635 this was conveyed by the Duke of Cumberland to the Mason family, who had owned it ever since. She referred to a document of 1783 and the Tithe Map of 1845. The case appeared to me to be interesting but showed little sign of substantiating a claim to ownership of Yockenthwaite Moor. Nevertheless I gave the Masons the opportunity to write in to the Commons Commissioners if they wanted an adjournment to enable them to pursue their case, before I issued a Decision that I was not satisfied that anyone was the owner of the land.

On 29th June 1987 Charlesworth Wood & Brown, Solicitors of Skipton wrote to the Clerk of the Commons Commissioners on behalf of the owners of Top Farm that they believed such owners might be able to prove ownership of Yockenthwaite Moor. Accordingly a hearing was fixed for 12th November 1987.

On 5th October 1987 Miss Laura Mason wrote to the Commons Commissioners that she had given her seventeen-thirtieths share in Top Farm to the National Trust, and that a relative Mrs S Sutcliffe had died leaving her seven-thirtieths also to the National Trust, so that the Trust then owned four-fifths of Top Farm.

At the hearing on 12th November 1987 Mr Sharman on behalf of the National Trust produced the original of an Indenture of 1634, which he said was a Lease to George Mason of Top Farm. He then produced the Probate of the Will of Matthew Mason (whom he supposed to have been George Mason's son) dated 1697 and a copy of the 1845 Tithe Map showing Yockenthwaite Moor. He said that the farm had been in the occupation of the Mason family for 350 years. The deed of 1634 (which is very difficult to read, and of which I was not then provided with a transcript) did contain a reference of some sort to Yockenthwaite Moor. Mr Sharman was unable to proceed further, so once again I granted adjournment to allow the claim of the National Trust to be developed.

A further hearing was fixed for 29th November 1988 but this was cancelled at the request of the National Trust.

On 9th May 1989 a hearing was held by the Chief Commons Commissioner Mr Peter Langdon-Davies. At that hearing the National Trust requested a further adjournment. The Chief Commons Commissioner made an order in the following terms:-

"Application for adjournment refused. If before 31 July 1989 the Clerk to the Commons Commissioner receives an abstract of title together with certified copies of deeds showing that any person is the owner of Yockenthwaite Moor or signed proofs of evidence which, if true, would show that any person has a possessory title to it, the Clerk will consider what further steps need to be taken.

Otherwise the Commissioner will give a decision stating that he is not satisfied that any person is the owner".

Documentation Supplied

On 27th July 1989 Pearlman Grazin & Co sent in to the Commons Commissioners the following copy documents, together with a letter explaining their clients' claim based thereon:-

1. 26/03/1841 Extracts from a Tithe Apportionment Agreement relating to Buckden
2. 06/12/1976 Deed of Appointment Miss L R Mason, Miss S Sutcliffe, Miss I Mason, Mr J O Mason & Mrs M Boothman (1) Miss L R Mason & Mr J O Mason (2)
3. 14/06/1985 Assent Mr P Mackie & Mr P G Mahoney (1) The National Trust (2)
4. 01/05/1987 Deed of Gift Miss L R Mason (1) The National Trust (2)
5. 11/05/1989 Statutory Declaration Mr J O Mason
6. 17/05/1989 Assignment Mr J O Mason (1) The National Trust (2)
7. 17/05/1989 Assignment Mrs M Boothman (1) The National Trust (2)
8. 17/05/1989 Conveyance Mr J O Mason & Miss L R Mason (1) The National Trust (2)
9. 25/10/1965 Tenancy Agreement Members of the Mason family (1) Mr D Mudd (2)
10. Chart showing equitable interests

Whilst these fell short of making out a full case, it was clear that they contained sufficient material to warrant investigation, and I accordingly directed that a further hearing should be held to resolve the matter.

Historical Documents

At the hearing on 4th October 1990 Mr Pearlman produced the originals of two ancient documents:-

1. An Assignment of a Lease dated 12th December 1634 between Henry Lodge of the one part and George Mason of the other part (this was the document previously produced to me by Mr Sharman)
2. A Feoffment dated 10th May 1635 between the Earl of Cumberland and his son Lord Clifford of the one part and George Maison (spelt with an I) of the other part



also supplied me with a typed transcription of the 1634 document and an incomplete hand-written transcription of the latter, which is a very long document and exceedingly difficult to read.

1634 Assignment

Putting it very briefly, the 1634 Assignment starts by reciting a Lease dated 25th July 1609 whereby the Earl of Cumberland and Sir William Ingleby demised to Robert Lodge (father of Henry Lodge) the messuage farm and tenement at Yockenthwaite of the yearly rent of 28 shillings and fourpence then in the tenure of Robert Lodge deceased or his assigns for fourscore and 19 years (99 years) if Robert Lodge, Henry Lodge and Thomas son of John Lodge should so long live. It continues that in consideration of £240 Henry Lodge demised to George Mason the said messuage etc then in his occupation and (with a lengthy description) all appurtenances enjoyed therewith "And also so much and such a proportion and full share of the soil and ground of all the stinted pastures of and belonging to Yockenthwaite aforesaid commonly called and known by the name of Yockenthwaite Bank Yockenthwaite Moor Yockenthwaite Green..... and of all other the crofts commons moores mosses heaths wastes and wastegrounds by what other name or names the same are called.....as is enforceable of right due and belonging to the said rent of 28 shillings and fourpence".

I have little doubt that this deed was the origin of the Mason family title to Top Farm. It will be seen that it carried with it such share of Yockenthwaite Moor as was attributable to the rent of 28 shillings and fourpence. The document of 1635 is entirely consistent with this and carries the story to its next stage.

1635 Feoffment

Again putting it very briefly, by the deed of 1635 in consideration of £56-18-4 the Earl of Cumberland and his son bargained and sold to George Maison the messuage farm and tenement at Yockenthwaite then in the occupation of George Maison and late in the occupation of Henry Lodge being of the ancient yearly rent of 28 shillings and fourpence and (with a very lengthy description) all the appurtenances thereof "And one full part and the third part of a part and the twelfth part of a part of all the field and ground of all the hill pastures of and belonging to Yockenthwaite and known by the names of Yockenthwaite Moor and Bank.....and of all other out commons moors heaths mosses wastes wastegrounds whatsoever by what other name or names the same are called within the towne or hamlet.....of Yockenthwaite aforesaid. the same pastures commons woods and wastes fields are in ten parts equally to be divided after the rate of 20 shillings ancient rent to every part".

Shares in the Moor

It appears therefore that the 1635 deed passed to the Mason family property comprising or including Top Farm together with a tenth share plus a third of a tenth share plus a twelfth of a tenth share in land which comprised or included Yockenthwaite Moor. The explanation of the complicated proportions is in the ancient rent of 28 shillings and fourpence. A rent of 20 shillings (£1) carried a tenth share in the moorland six shillings and eightpence (one third of £1) a further third and the balance of one shilling and eightpence (one twelfth of £1) a further one twelfth. So the Mason family acquired a total of 17 one-hundred-and-twentieth parts of the moorlands, the remaining 103 one hundred-and-twentieth remaining vested in other persons.



841 Tithe Agreement

There is a gap of two centuries before the next document put before me. This was the extract from the Tithe Rentcharge Apportionment Agreement for the Township of Buckden confirmed by the Tithe Commissioners on 26th March 1841. Under the heading "Stinted Pastures" there are some ten entries including one for Yockenthwaite Moor. Here in the Landowners column appears the name of Johnson Thomas Mason. In the Occupiers column there are two entries, Widow Hird & Sons in respect of 725 sheep gaits and George Beresford in respect of 119½ sheep gaits. In the Remarks column there appear the following words (which are bracketed against all the Stinted Pasture entries):-

"The following Stinted Pastures have always been accustomed to de-pasture the number of full aged beasts or sheep here stated and each of the landowners is intitled to a proportionate part of the land thereof in proportion to the number of beasts or sheep gaits.

The Rentcharge in lieu of these Gaits is apportioned upon the inclosed Lands of the Respective proprietors."

Corresponding Entries in Commons Register

It may be observed that the numbers of sheep gaits in the Agreement of 1841 correspond precisely with the entries in the Rights section of the Commons Register registered in 1968 and 1970, 725 sheep in respect of Yockenthwaite Farm and 119½ in respect of Top Farm. It may also be observed that the registration under entry No. 2 (later cancelled) was made by Thomas Hird and Anthony Hird as Tenants of Yockenthwaite Farm, corresponding with the entry in the 1841 Agreement of the Widow Hird and Sons as occupiers in 1841, showing that the Hird family also have long been associated with Yockenthwaite Moor.

Corresponding Shares in 1635 Deed

In 1841 it seems that there were a total of 844½ sheep gates (725 plus 119½), a curious number having regard to the statement in the remarks column that the numbers stated were of full aged beasts or sheep, that is to say one animal per gait. The odd half is therefore inexplicable. The relationship between the numbers of animals in 1841 and the shares of Yockenthwaite Moor in 1635 is not immediately apparent, but they do very nearly co-incide. If one multiplies the 17 shares out of 120 acquired by George Mason in 1635 by 7, it will be seen that he had 119 out of 840 (figures which are close to the 119½ out of 844½ gaits two centuries later).

Johnson Thomas Mason

The name of the Landowner in the Agreement of 1841 reading Johnson Thomas Mason may be misleading. It will be observed that all other entries under this heading have their names inverted e.g. Smith Richard, Beresford George, Macauley Mary. It seems therefore that in respect of Yockenthwaite Moor the landowner was probably Thomas Mason Johnson, rather than the other way round. Nevertheless the Mason connection remains and his exact name is unimportant, as no devolution of title from him is made out, whatever his name may have been.



What is important is that "Johnson Thomas Mason" is the only name appearing in the Landowner column of the 1841 Agreement in respect of Yockenthwaite Moor. It follows that the entry in the Remarks Column relating to the Stinted Pastures generally that "each of the landowners is intitled to a proportionate part of the land thereof in proportion to the number of beasts or sheep gaits" cannot apply to Yockenthwaite Moor, where only one landowner is shown.

Yockenthwaite Farm

Yockenthwaite Farm and the 725 sheep gaits on Yockenthwaite Moor enjoyed with it were acquired by the National Trust in 1989 as part of a large gift of land in Yorkshire. Effect was given to this gift by a Conveyance dated 31st January 1989 between William Anthony Graham Watson and John Edwin Brown (1) and The National Trust (2). The property thereby conveyed included in paragraph 15 of the First Part of the Schedule thereto 257 acres known as Yockenthwaite Farm Buckden with 725 sheep gaits on Yockenthwaite Moor comprised in a Conveyance dated 6th August 1963 made between Percy Hartley Burton (1) and W A G Watson and D M Watson. A certified copy of the Conveyance of 1963 is before me, which shows that it included in the Second Schedule Yockenthwaite Farm, Buckden with 725 sheep gaits on Yockenthwaite Moor. There is no suggestion in either of these two conveyances that they also carried any interest in the freehold of Yockenthwaite Moor. No earlier title deeds in respect of Yockenthwaite Farm have been put before me. W A G Watson and D M Watson are (as mentioned above) registered in the Rights section of the Commons register in respect of rights of turbary, sporting, and to take minerals and to graze 725 sheep attached to Yockenthwaite Farm. They made no application to register themselves as owners of Yockenthwaite Moor. By an Agreement dated 29th June 1982 (of which a certified copy is before me) the Watsons let Yockenthwaite Farm together with their "seven-eighths share of grazing rights on Yockenthwaite Moor Common" to Stuart Anthony Hird. Since January 1989 the National Trust has been in receipt of the rents under this Agreement.

Top Farm

Top Farm Yockenthwaite and the 119½ sheet gaits attached thereto have also been acquired by the National Trust. The title thereto is however infinitely more complicated than the title to Yockenthwaite Farm. The National Trust acquired its interest by five separate documents, four of which deal with equitable interests in the property and one with the legal estate. Those dealing with the equitable interests are as follows:-

1. 14th June 1985 Assent in favour of the National Trust in respect of the seven-thirtieths share of Susannah Sutcliffe
2. 1st May 1987 Deed of Gift between Laura Roberts Mason (1) and the National Trust (2) in respect of her seventeen-thirtieths share
3. 17th May 1989 Assignment between Margaret Boothman (1) and the National Trust in respect of her one-tenth share
4. 17th May 1989 Assignment between John Owen Mason (1) and the National Trust (2) in respect of his one-tenth share.



All the documents are expressed to be in respect of Top Farm together with all such right title and interest in Yockenthwaite Moor as have thereto before been enjoyed with Top Farm and together with 119½ sheep gates on the said Moor.

The fifth document in favour of the National Trust is a Conveyance dated 17th May 1989 between John Owen Mason and Laura Roberts Mason (1) and the National Trust (2). By this Conveyance, after a recital that the property was vested in J O Mason and L R Mason as Trustees for the National Trust absolutely it was conveyed to the National Trust in fee simple. The description of the property was the same as that in the four other documents, as set out above.

Legal Estate in Top Farm

John Owen Mason and Laura Roberts Mason acquired their title as Trustees under a Deed of Appointment dated 6th December 1976 and made between Laura Roberts Mason Susan Sutcliffe Irene Mason John Owen Mason and Margaret Boothman ("the Tenants in Common") (1) and Laura Roberts Mason and John Owen Mason ("the Trustees") (2). This deed recites that under the Will dated 4th April 1820 of Adam Mason which was proved on 28th December 1824 and subsequent documents and events the property described in the Schedule thereto was immediately before 1st January 1926 vested in the beneficiaries whose names and shares are set out in the Second Schedule thereto. It then recites that by virtue of sub-paragraph (4) of paragraph (1) of Part IV of the First Schedule to the Law of Property Act, 1925 the property became vested in the Public Trustee; that the undivided shares in the property were then vested in the Tenants in Common; and that they desired to appoint the Trustees as trustees of the property in place of the Public Trustee. The operative part of the deed then gave effect to this desire. The property described in the Schedule was Top Farm together with (so far as the Tenants in Common could lawfully vest the same) all such right and interest in Yockenthwaite Moor as had hitherto been enjoyed with Top Farm and in particular 119½ sheep gaits on the Moor.

The Mason Family

Having regard to the Deed of Appointment of 1976, I do not need to investigate further the equitable interests in Top Farm prior to that date. There however are two documents dealing with the earlier equitable interests, of which certified copies are before me, and which contain recitals giving particulars of the issue of Adam Mason, who died on 30th March 1823. These are Conveyances dated 5th January 1905 between Narcissa Helen Mason (1) and James Mason(2) and dated 10th July 1918 between Joe Kendall Smith (1) and Mary Mason (2). Mr Pearlman also provided me with a Family Tree commencing with John Mason (the eldest son of Adam Mason). These documents show that the persons having vested or contingent shares or interests in Top Farm and the 119½ sheep gates at the date of the Tithe Agreement of 1841 were John Mason, his elder daughter Ann Airey, his sons Adam, James and Matthew Mason and his youngest child Mary (who was then only 9 years old). None of these names co-incides with that of Johnson Thomas Mason (or Thomas Mason Johnson), who in the Tithe Agreement was recorded as being the landowner in respect of Yockenthwaite Moor. Moreover neither the 1905 nor the 1918 Conveyance contains mention of any interest in Yockenthwaite Moor apart from the 119½ sheepgates therein.



Statutory Declarations

The documentation before me also included two Statutory Declarations, one dated 11th May 1989 by John Owen Mason and the other dated 28th July 1989 by David Leslie Mudd.

Mr Mudd declared that he had been the tenant of Top Farm since October 1965. He continued as follows:-

"4. I have always believed that the Mason family are the owners of Yockenthwaite Moor and I understood that I had the benefits over the Moor in my capacity as their tenant. I was also informed by my predecessors as tenants and thus verily believe that they also believed that to be the situation.

5. All and any money that I paid (if any) in respect of Yockenthwaite Moor was paid to the Mason family and was paid to them in their capacity as my landlords and under my belief and acceptance that they were the owners of Yockenthwaite Moor".

Mr Mason (who was born on 21st August 1930) declared (inter alia):-

" 10. TO the best of my knowledge the (Mason) Trustees have been in possession of the area.....known as Yockenthwaite Moor for as long as I can remember and indeed for many years before my birth and have received the net rents and profits therefrom for the same period. To the best of my knowledge the Trustees have never received any claim by any other person adverse to their possession of the said land".

Both these Declarations completely overlook the fact that the bulk of the sheep rights on the Moor (725 out of a total of 844½) were vested in W A G Watson and D M Watson (or their predecessors in title) and that those persons were in receipt of rents from the Moor in respect of those sheep rights. No evidence was adduced before me that Mr Mudd paid any rent to the Masons for any interest in the Moor other than the sheep rights or that the Mason family ever performed any acts of possession on the Moor apart from receipt of the rents for their sheep rights.

Property Acquired by National Trust

The National Trust has acquired all the registered sheep rights on Yockenthwaite Moor, 119½ attached to Top Farm and 725 attached to Yockenthwaite Farm. It does not follow however that ownership of all the sheep rights carries with it ownership of the Moor. The Feoffment of 1635 shows that the land then vested in George Mason carried with it 17 one-hundred-and-twentieth shares in the Moor (which is approximately the same proportion of the whole as 119½ sheep gaits bears towards the total of 884½ sheep gaits). Beyond this however ownership of the Moor becomes shrouded in the mists of time. The Tithe Agreement of 1841, instead of resolving the problem, clouds the issue. It shows the identical number of sheep gaits, but gives the name "Johnson Thomas Mason" as Landowner of the whole.



Conclusion

Mr Pearlman told me that research had been undertaken for a person of this name (either J T Mason or T M Johnson) but without result. Purely as a matter of speculation, I would suppose that he could have been the husband of one of Adam Mason's daughters, who adopted Mason as his middle name. How he acquired ownership of Yockenthwaite Moor, and to whom ownership of it has since descended, is however another story.

On this evidence I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 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

18th

day of

April

1991

Martin Roth

Commons Commissioner