



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/315

In the Matter of Moorland
in Laverton, Harrogate Borough,
North Yorkshire

DECISION

This references relates to the question of the ownership of the part ("the Referred Part") hereinafter defined of the land containing about 113.2 acres and known as Moorland in Laverton, Harrogate Borough being the land comprised in the Land Section of Register Unit No. CL116 in the Register of Common Land maintained by the North Yorkshire (formerly West Riding) County Council. The said land ("the Unit Land") is divided into two parts by the road from Pately Bridge on the southwest to Laverton and Kirkby Malzeard on the northeast. Of the part northwest of the said road (about 1/3rd of the whole) at Entry No. 1 in the Ownership Section, the Lord Mayor Aldermen & Citizens of the City of Leeds are registered as owners. The Referred Part is the remainder of the Unit Land, all to the southeast of the said road; of it 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 Godfrey Stafford Bostock claimed (his Solicitors' letter of 30 October 1984) ownership of the Referred Part under a conveyance to him dated 14 January 1966 of the manors or lordships or reputed manors or lordships of Kirkby Malzeard, Dallowgill, Swetton and Carlesmoor together with the rights royalties members and appurtenances thereof, and said (a PS to the said letter) that the remaining part of the Unit Land belonged to him under a conveyance dated 10 March 1981 between Leeds City Council and himself. In a letter received 3 December 1984 Mr P Burrill of Low Belford Farm said of the Referred Part: "ownership the Parish". No other person claimed to be the freehold owner of the land in question or 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 in York on 21 February 1985. At the hearing: (1) the said Mr G S Bostock who applied for the Rights Section registrations at Entry Nos 1 and 8 (a right to graze 40 sheep attached to the Drovers Inn and the right of sporting shooting and burning heather over the part of the Unit Land owned by the Leeds Corporation, was represented by Mr J H Weatherill solicitor of Atkinson, Dacre & Slack, Solicitors of Otley; (2) the said Mr Peter Burrill who applied for the Rights Section registration at Entry No. 3 (a right to graze sheep and cattle, shoot take stone and turbarry) attended in person; and (3) Mr Lewis Burrill of Carlesmoor who (? may have) applied for the registration at Entry No. 2, attended in person.

In the course of his oral evidence Mr Weatherill produced the document specified in Part I of the Schedule hereto. This document had been produced by him at a hearing relating to Register Unit No. CL212 held by me immediately before this CL116 hearing and resulted in a discussion mentioned in my CL212 decision of even date; as stated in such a decision I at my 1985 hearing said that I would defer my decision to enable Mr Weatherill if he wished to make legal submissions about the documents he had produced if within 6 weeks of such wish he notified the Clerk of the Commons Commissioners. It was understood that my CL116 decision would be deferred for a like purpose. In letters dated 11 April and 15 May 1985



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Atkinson, Dacre & Slack said (in effect):- They were not able to make any representations on matters of law but subsequent investigations had (1) suggested that even Mr Bostock's conveyance was not sufficient to enable him to claim ownership thereunder he had exercised rights of ownership over the land involved and (2) resulted in the finding of some evidence that the land is manorial land; they asked that there be a further hearing at which this evidence could be produced.

On 14 July 1986 I held a hearing at Ripon for the purpose of considering the said April and May 1985 letters and possibly continuing the said February 1985 hearing. At this hearing: (1) the said Mr G S Bostock was represented by Mr S G Maurice of counsel instructed by Atkinson, Dacre & Slack; (2) the said Mr Peter Burrill attended in person as before; and (3) Mr Lewis Burrill also attended in person as before. This 1986 hearing about the Referred Part was held immediately after my 1986 (second) CL 212 hearing mentioned in my said CL 212 decision of even date; much of the evidence about the Referred Part was given by reference to what had been said and produced at the CL 212 hearing; so → to shorten this CL 116 decision, my CL 212 decision should be treated so far as relevant as repeated herein.

As helping to show that Mr G S Bostock is the owner of the Referred Part, Mr Maurice and Mr North produced or referred to the documents specified in the Schedule hereto, all of which except GSB/40 and 41 had been referred to at the preceding CL 212 hearing. They claimed he became the owner under the 1966 conveyance (GSB/1), his paper title being essentially the same (except as hereinafter mentioned) as the Bostock Title to the CL 212 1984 Claimed Part. So, as I did as regard such Part, I consider (1) the circumstances surrounding the 1966 conveyance and (2) possession of the Referred Part.

As to (1), in addition to the before 1839 manorial documents by me considered at my CL 212 hearing, I have the allotment (GSB/40) contained in the 1789 Award. Although no copy of the Award plan can be found, Mr North by reference to a modern map identified the allotted land expressed to be of 115a.0r.10p. with the 113.2 acres of the Unit Land, pointing out that on such map (GSB/41) are marked "Grange Allotment"; "Coal Hill", "Coal Dike" and "Skelding Moor"; and also so marked (like Castell Lane in the allotment so marked) "Cast Hills", "Castles Farm" and "Cast Hills Settlement".

As to (2), Mr North particularly mentioned as relating to the Referred Part, ditching (see GSB/26, 29 and 30), burning 8 acres of heather, and vermin control, to which his CL 212 evidence was applicable.

Questioned by Mr Burrell about Azerley and Galphay, Mr North producing an 1/2,500 OS map of 1909 pointing out the marking on it of "Common to Laverton Ph and Galphay (Azerley Ph)"; on such map the Referred Part is numbered 4, 70 and 193 containing 69.981, 0.736 and 0.206 acres.

On the day after the hearing I from the road inspected the Referred Part as recorded in my said CL 212 decision.

As to (1):-

Having seen the Referred Part, I accept as reliable the identification of the 1789 allotment of 113 acres, as being of the Unit Land. The rights of "the several persons interested" to get peat etc. and to pasture cattle thereby granted are to some extent preserved by the registrations made in the Rights Section of this



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Register Unit. I infer that before the 1789 Award, the Referred Part was owned by the Lord of the Manor subject only to the rights of common then existing. In my opinion the allotment although it may have reduced or somehow qualified the ownership of the Lord of the Manor, → did not extinguish it altogether, see the observations of Lindley LJ in re Christchurch (1888) 38ChD 520 at page 527; see also the same case in the House of Lords 1893 AC1, and Simcoe v Pethick 1898 2QB 555. The documents produced are therefore reason enough if not qualified in some way for my being satisfied that Mr G S Bostock is the owner.

As to the suggestion in the April 1984 letter that the Parish might be the owner:- Although the 1789 allotment may have resulted in the Unit Land being popularly regarded as in the ownership of the Parish, it did not for reasons above explained under it thereby become vested in the churchwardens and overseers as the predecessors of the Parish Council or in any other person who then or subsequently were treated as representing the Parish. In the absence of any evidence in any way supporting the parish ownership, I reject the suggestion of Mr P Burrill that the Referred Part is in law in any sense now parish property.

As to (2):-

The acts of possession described by Mr North as having been done on behalf of Mr G S Bostock support his claim to be the owner.

So having no good reason for not giving full effect of the evidence given on behalf of Mr G S Bostock, I am satisfied that he is the owner of the Referred Part, and I shall therefore pursuant to section 8(2) of the Act of 1965 direct the North Yorkshire County Council, as registration authority, to register Mr Godfrey Stafford Bostock of Tixall, Stafford as the owner of the Referred Part.

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, required me to state a case for the decision of the High Court.

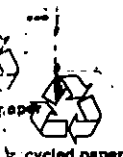
SCHEDULE
(Documents produced)

Part I: in 1985

GSB/1
(so marked
in the CL 212
proceedings

14 January 1966

Conveyance by Henry Vyner (vendor) and Broadland Properties Limited (purchaser) to Godfrey Stafford Bostock (subpurchaser) of (1) Manors or reputed manors of Kirkby Malzeard, Dallowgill, Swetton and Carlesmoor "with royalties, members and appurtenances thereto belonging together with all such estate and rights as the vendor possessed or can convey as Lord of the Manor of ... in the land ... edged with a broken blue line on the plan annexed; (2) properties specified in Part I of First Schedule blue, green and red (total 1,515.615 acres; (3) ... (4) ... (5) ... and (6) ...





Part II: in 1986

- 30 June 1789 Copy of Kirkby Malzeard Inclosure Award in case inscribed "David Richardson, North View 1878 (130 pages but no map):
- GSB/13 -- Plan attached to conveyance of 14 January 1966 (GSB/1 supra): Referred Part edged blue dotted line.
- GSB/40 -- Extract from said copy of 1789 award being an allotment of the West part of Laverton Moor and Galwhey Moor containing 115 acres 0 r.10p. as delineated on "plan hereunto annexed"; and described by reference to allotments to Robert Grainges and John Grainges, and by reference to "Castell Lane", "Coaldyke adjoining Dallow Moor ... thence along Coaldyke to Skeldon Common from thence down Coal Hill" to "remain open and unenclosed and be held and enjoyed by the several persons interested therein" for the sole and only purpose of getting peat ling turves and stones and depasturing of cattle in the same manner as they now hold it and have heretofore held and enjoyed the same."
- GSB/41 -- Extract OS map (6" = 1 mile) marked "C" (14" x 11") showing Referred Part edged blue and "Coal Hill", "Coal Dike", "Grange Allotment" and "Skelding Moor".
- GSB/26 -- Statement of intended evidence by Mr Peter North mostly relating to CL 212, but of CL 116 saying in 1980 Mr Bostock had approximately 300 yards of ditching carried out at a cost of £138.
- GSB/29 11 February 1980 Estimate of T & H Prest "Job to dig Ditch from road to wall on Skelding Moor approximately 300 yards, price £120 + vat.
- GSB/30 20 March 1980 Invoice and receipt 17 April 1980 including Job 2 mentioned in JSB/29 supra.

Dated this 10th — day of March — 1987

a. a. Baden Fuller

Commons Commissioner