



COMMONS REGISTRATION ACT 1965

Reference No: 268/U/302

In the matter of the tract
of land containing 2046.4 acres
or thereabouts known as
Grassington Moor, Grassington

DECISION

This reference relates to the question of the ownership of land known as Grassington Moor being the land comprised in the Land Section of Registrar Unit No. CL 77 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 Anthony Fenwick Denby Roberts, Peter William Denby Roberts, Ann Allen and Christopher Harold Hindley claimed to be the freehold owners of the land in question.

I held a hearing for the purposes of inquiring into the question of the ownership of the land at Skipton on 10th, 11th and 12th November 1987.

Representation

Miss Sheila Cameron QC instructed by Mr Gillibrand of Cglethorpe Sturton & Gillibrand of Lancaster appeared for Messrs A F D Roberts and P W D Roberts, Mrs Ann Allen and Mr C H Hindley ("the Claimants").

Mr J J Pearlman, Solicitor of Pearlman, Grazin & Co of Leeds appeared for Mr Keith Lockyer.

A number of rights holders and villagers also attended the Hearing.

The Registers

There are some 60 entries in the rights section of the register which have become final, in the majority of cases in respect of sheep gaits, but in a number of cases in respect of turbary, estovers, pannage and other rights. Some of these registrations, being undisputed, became final in 1972. The remainder became final in May 1983, following a Hearing before Mr Commissioner Hesketh dealing with disputed registrations.

There are no entries in the ownership section of the Register.

Adjournments

The present ownership inquiry has twice before been listed for hearing, first on 16 October 1984 and then on 22 October 1985, on both occasions before Mr Commissioner Hesketh. It was (as I understand it) adjourned on both occasions at the request of Mr Lockyer, to enable him to conduct investigations and prepare his case.

The Claimants

The Claimants claim as successors in title to the Duke of Devonshire and the Trustees of the Chatsworth Estates.



Mr Lockyer does not set up any alternative claim. He merely objects to and opposes that of the Claimants. This was not always the case. At the date of the hearing in 1985 he was endeavouring to establish a claim on behalf of a body of persons who can shortly be described as "the freeholders of Grassington". By June 1986 however he had made it clear to the Claimants' Solicitors that he no longer intended to proceed with a positive case, but merely desired to oppose that of the Claimants.

The Objector

Mr Lockyer served as a Councillor on Skipton Rural District Council 1963/1974 and as Chairman 1970/1971; on North Yorkshire County Council 1973/1977 and as Chairman of the Yorkshire Dales National Park Committee for that period; has since 1985 served as the local member for Grassington in the Division of Mid Craven. He has a freehold property in Grassington, and is registered in the Rights Section of the Register as having 22 sheep gaits and the right of turbary over the whole of the land in this register unit: see Rights Entry No. 24.

Claimants' Title

By a Conveyance dated 5 September 1984 between (1) Thomas Edward Sydney Egerton and Ian Hamish Leslie Melville (2) Andrew Robert Buxton Duke of Devonshire and (3) the Claimants in consideration of the payment of £10,000 all that land containing 2042.00 acres or thereabouts in the Parish of Grassington in North Yorkshire (excluding buildings and structures erected for mineral operations) known as Grassington Moor was conveyed to the Claimants in fee simple. That conveyance excepted and reserved all mines and minerals in the terms set out at length in the Second Schedule thereto, and was made subject to (i) The rights contained in a Conveyance of Sporting Rights dated 25 March 1887 between (1) William Duke of Devonshire and (2) Clement Blackburn and (ii) All rights of Common subsisting over the land.

The Abstracts of Title on which title to the land was based prior to this sale were merely general Abstracts of the Title of the Trustees of the Chatsworth Estates and before that of the Chatsworth Estates Company Limited to all lordships, manors, reputed manors and other real or leasehold property of the Duke in the Counties of (inter alia) Derby, Nottingham and York. There is no mention in the abstracted documents of Grassington Moor or any other specific land. The title was however supported by a Statutory Declaration sworn by Mr John Michael Sheard on the 16th August 1984, in which he said that since 1923 the Company or the Trustees had exercised undisputed rights of ownership over the Moor; that in particular they had worked the minerals and granted easements including a Deed of Grant of 12th October 1966 in favour of I.C.I.; and that the Dukes of Devonshire had been Lords of the Manor of Grassington for upwards of 300 years.

Sporting Rights

The sporting rights reserved out of the Conveyance of 5th September 1984 were in fact at that date already vested in the Claimants. By the Conveyance of 25th March 1887 mentioned in the 1984 Conveyance William Duke of Devonshire conveyed to Clement Blackburn all the right of sporting over Grassington Moor being part of the Waste Lands of the Manor of Grassington and containing 1989 acres or thereabouts. By a Conveyance dated 16th February 1984 made between (1) Thomas Edwin Blackburn and (2) the Claimants in consideration of £218,000 several parcels of land at Grassington



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and the right of sporting over and upon Grassington Moor described in the Conveyance of 25th March 1887 were conveyed to the Claimants in fee simple.

No-one contests the Claimants' rights of sporting over the Moor, but only their claim to the freehold. The Claimants' purpose in acquiring the freehold is to gain control of the Moor, with the intention of maintaining it as a grouse moor.

Lordship of the Manor

It was not disputed that the Lordship of the Manor of Grassington was vested at all material times in the Dukes of Devonshire and their predecessors. Mr Lockyer's contention is that in or about the year 1604 the Lord of the Manor divested himself of the freehold of the Moor, and that thereafter the Lordship and the freehold of the Moor remained in different hands.

Possessory Title

In support of their paper title to the freehold the Claimants relied on a series of alleged acts of ownership by the Dukes during the 20th Century. These were the subject matter of the evidence of Mr Sheard and other witnesses, which I shall deal with at length later in this decision. This part of the case I shall refer to as "the Modern Possessory Title".

In addition to the claim based on the 20th Century acts of the Dukes, Miss Cameron submitted that the modern possessory title was only an extension of a possessory title which had been acquired by the Dukes or their predecessors during the 18th and 19th Centuries. In support of this contention Miss Cameron relied on documentary evidence as showing that the title of any other claimant to the freehold was extinguished by the 19th Century Statutes of Limitation. This part of the case I shall refer to as "the Historic Possessory Title".

The Lead Mines

From the evidence as a whole it became abundantly clear that the most valuable aspect of the Moor until the 20th Century (and for the early part of this Century) was the mining interest. It will be seen that when the Dukes' predecessor divested himself of the freehold of the Moor in 1604, he retained the mines and minerals, and this position is reflected right down to the conveyance to the Claimants in 1984, when the mines and minerals were excepted and reserved to the Duke or his Trustees. It will also be seen that the reservation of the mines and minerals to the Dukes' predecessor resulted in the mineral owners receiving what amounted in the 18th and 19th Centuries to the greater part of the profits of the Moor.

In considering the historic possessory title (and to a lesser extent, the modern possessory title) it is therefore essential to distinguish between acts done by the Dukes in exploitation of their mineral rights and acts done by them which fall outside this ambit.

The Dukes

When in this decision I refer in general terms to "the Duke" this expression includes successive Dukes and their predecessors owners of the mineral rights from time to time and their agents and mineral lessees.



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The 1604 Conveyances

By a series of deeds George Earl of Cumberland Francis Clifford his brother and Sir William Ingilby sold and conveyed to tenants of their Grassington estates the houses and tenements which they occupied together with an interest in the freehold and soil of the stinted pastures and other enclosed commons wastes and moors of Grassington and of all other commons wastes and moors not then inclosed but lying open. There were 29 such Conveyances in 1604, mostly dated the 2nd May. There are also two further Conveyances which appear to be part of the series, one in 1614 and the other in 1627.

It appeared that all these deeds followed the same conveyancing form, with appropriate variations. It was therefore agreed that for the purposes of this hearing only one specimen deed should be referred to. This was the Conveyance to Francis Hewitt. All the conveyances were in antique script and a typed transcription of the relevant parts of the Hewitt Conveyance was also agreed.

Expert Evidence on Historical Background

Mr Lockyer called two expert witnesses to deal with matters of historical research. Rather than going to great length in summarising their evidence, I propose to annex to this Decision copies of their respective Proofs. The first of these experts was Dr Richard Turfitt Spence, whose qualifications are set out in his Proof of Evidence, a photocopy of which appears at Appendix A. In his proof Dr Spence gives a fascinating account of the fortunes of the 3rd Earl of Cumberland which led to his mortgaging and then selling off (inter alia) his Grassington estates. In particular he refers to Samuel Peirce's Survey of Grassington Manor (1603), a document over 90 pages long also written in antique script. I do not propose in this decision to deal in any detail with the contents of that Survey. I do however adopt the conclusion which Dr Spence reached at the top of page 3 of his Proof:-

"Altogether, Peirce's survey gave an almost comprehensive picture of the township of Grassington, its occupants, dwellings and farming. The specific detail available here was not repeated in the 1604 grants, but it would be common knowledge to Earl George, his officers and the tenants and cottagers, and what was included in each grant would be well-understood by the parties involved."

Property comprised in the 1604 Conveyance to Hewitt

The grant in this Conveyance comprised the following parcels:-

- i. a messuage or tenement and two oxgangs of land in Grassington then in the occupation of Thomas Hewitt grandfather of Francis;
- ii. all houses buildings gardens lands pastures cattlegates unstinted pastures then inclosed commons wastes easements profits and hereditaments whatsoever belonging or appertaining to the said messuage or tenement and two oxgangs of land under the yearly rent of fourteen shillings and eight pence;
- iii. a parcel of meadow called Breadedale containing one acre or thereabouts in the East Field of Grassington and a parcel of arable land and meadow at



Lathowes foot in the West Field of Grassington which two parcels were late parcels of one ancient tenement and two oxgangs of land then in the possession of Robert Deane or his assigns in Grassington and were then in the possession of Francis Hewitt;

iv. "the freehold and soyle of soe muche and suche parte of all the stinted pastures & other commons wastes & mores of Grissington aforesaid nowe inclosed or taken upp as by rate of oxgangs within Grissington aforesaid doth or shall apperteyne or belonge unto the said Twoe oxgangs hereby grannted devydinge the whole stinted pastures aforesaid accordinge to & after the rate of Threscore oxgangs half an oxgange and the fowrth parte of an oxgange of arrable land meadowe & pasture And the freehold and soyle of soe muche and suche parte of all other commons wastes & mores of Grissington aforesaid now not inclosed but lyinge open as by the rate of oxgangs within Grissington aforesaid doth or shall apperteyne or belonge aswell unto the said Twoe oxgangs hereby grannted as unto the said twoe parcells of meadowe or arrable land herein alsoe grannted accountinge the same to & for half an oxgange of land & meadowe devydinge the said other commons mores & wastes accordinge to & after the rate of Threscore fyve oxgangs & a half oxgange of arrable land meadowe & pasture And all woodes and underwoodes standinge growinge & beinge of that premisses above grannted And alsoe common of pasture & Common of turbary in upon & throughout all the mores & Commons of Grissington aforesaid in as large & beneficiall manner as the said Thomas Hewitt or his assignes nowe have or at any tyme heretofore have had & enjoyed the same, for or in respect of the premises hereby granted or any parte thereof";

v. liberty to dig for and get slate and stone for building repairing or fencing the premises;

The Rights Excepted from the Hewitt Conveyance

There were excepted and reserved to the Earl Francis Clifford and William Ingilby

i. free warren and chase and liberties of fishing fowling and hunting in as large and ample a manner as the Earl or his ancestors had or used to have;

ii. "all and singuler mynes of leade copper Iron cole freestone & slate in the premisses before menconed (other then in the said messuage howses orchardes gardins croftes arrable land & meadowe within the feildes of Grissington aforesaid parcells of the above grannted premisses) And free liberty & leave to sinck digg & search for the said leade copper Iron cole freestone & slate at there liberty & pleasure (other than in the said messuage gardins croftes arrable landes & meadowes within the fieldes of Grissington aforesaid And alsoe excepted & reserved full power liberty & authority to have & converte all suche lead copper Iron cole freestone & slate as they or any of them shall fynde & gett in or out of the said premisses or anie parte thereof to his & there owne onely proper use & behooffe with reasonable & convenient egresse & regresse to carrye and recarrye the same at all tyme & tymes hereafter for ever".



Summaries of the Cases of the Claimants and of Mr Lockyer

In order to save time at the Hearing and to avoid the possibility of any further adjournments, the Chief Commons Commissioner in March 1986 directed the Solicitors for each of the parties to submit to the Commons Commissioners before the adjourned hearing Statements of their respective client's cases. The Statement of the Applicants' Case was delivered on or about 3rd November 1987 and the Statement of Mr Lockyer's Case on the following day.

Miss Cameron's submissions on the effect of the Conveyances of 1604

Miss Cameron submitted:-

- i. that the various indentures were ineffective to create a tenancy in common in the Moor because they failed to identify in the documents the distinct shares intended to be conveyed. She contended that the essential feature of a tenancy in common at common law was that each tenant had "a distinct tenement, a distinct freehold" and referred to Preston on Estates (1820) Vol. 1 at p. 139. She said that from a conveyancing point of view this was necessary because of the various ways in which an interest held in common could be dealt with, and referred to Vol. 2 p.55/56 and Preston on Conveyancing (1819) Vol. 1 at pages 369, 375, 390-393;
- ii. that extrinsic evidence could not be relied upon to cure the uncertainty in the Indentures. She argued that failure to identify the property clearly rendered the deeds void for uncertainty, and cited Hungerford's case (1585) Leon. 30; 74 E.R. 28 and Vol. 12 Halsbury's Laws of England 4th edition at paras 1506 and 1508.

Construction of the Conveyances of 1604

At an early stage of the hearing I admitted having difficulty in understanding the passages in the Hewitt Conveyance relating to the division of the freeholds of the stinted pastures by reference to the rate of oxgangs appertaining to the two oxgangs thereby granted according to the rate of threescore and three-quarters of an oxgang of arable land and pasture and the freehold of all commons and wastes not then enclosed by the rate of oxgangs appertaining to the two oxgangs thereby granted as unto the two parcels of meadow or arable land also granted accounting for the same for half an oxgang dividing the other commons and wastes according to the rate of threescore and five and a half oxgangs of arable land and pasture.

Possibly in consequence of the lack of understanding which I expressed a great deal of time was spent by Mr Pearlman and by Dr Spence in giving evidence and endeavouring to explain how the overall calculations of $60\frac{1}{2}$ and $65\frac{1}{2}$ oxgangs were made up. This would have been of importance if Mr Pearlman had been endeavouring to establish title to some or all of the undivided shares in the Moor. As this was not the case, I need not reach any conclusion as to the precise shares in which the Moor was divided. Suffice it to say that Mr Lockyer put his case in the simplest form as follows:

The oxgangs of land in Grassington described in the conveyances of 1604 as $60\frac{1}{2}$ and $65\frac{1}{2}$ were not the measures of enclosed pasture and moor but the totals of cultivated farmland in the Manor by which these tracts of freehold land were



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to be divided. The purchaser of one oxgang (for £80) received his house, the land he farmed in the Manorial fields (about 13 acres), $1/60\frac{1}{2}$ of the enclosed pasture and $1/65\frac{1}{2}$ of the un-enclosed moor. These shares were 8 beast gates in the pasture, and 20 sheep gates on the moor per oxgang.

Admissibility of Evidence to assist Construction

It is a canon of construction that evidence of intention is not admissible to construe a written instrument, but that extrinsic evidence is admissible to show the surrounding circumstances at the date when the instrument was executed. I have no hesitation in admitting Dr Spence's evidence and in particular Peirce's Survey of 1603 to explain the background which existed when the Conveyances of 1604 were executed. Although it may be difficult in 1988 to understand the formula used in 1604, I accept Dr Spence's conclusion that what was involved in each grant would have been well-understood by the parties involved.

My conclusions on the 1604 Conveyances

The fact that in the Conveyances of 1604 the Earl reserved the sporting rights over and the minerals in the Moor is indicative that he was parting with all his interest in the freehold thereof. The freehold was conveyed to some 30 former tenants in shares calculated in accordance with a formula. It is not necessary for me to determine precisely how that formula applied. It is sufficient for me to conclude that it would have been well-understood at the time.

I therefore reject both the submissions made by Miss Cameron as to the effect of the Conveyances of 1604. I am satisfied that each of these Conveyances did convey a distinct undivided share in the freehold of the Moor; and I do not accept her argument that they were void for uncertainty.

Claim to a Possessory Title

This brings me to the other aspect of the case, that of the possessory title claimed by the Claimants. As I have already said, this is in two parts: (i) the historic possessory title and (ii) the modern possessory title. I shall deal with these in chronological order.

Before doing so it seems to me that I should first consider the law applicable to a title by adverse possession. Miss Cameron referred me to the Real Property Limitation Act, 1833, sections 2 and 34, and the amending Act of 1874. I am not so much concerned with the statutory provisions, as with their application to the facts of the present case. This raises the question which has frequently been litigated since 1833, as to what acts of adverse possession are sufficient to extinguish the title of the true owner at the end of the statutory period. It seems to me that the authorities on this topic apply in much the same way to the provisions of the Act of 1833 as to those of the Limitation Act, 1939 or the current Act.

The Law on Adverse Possession

The only case on this topic cited to me was Powell v McFarlane (1977) 38 P. & C.R. 452, to which I was referred by Mr Pearlman. This is a monumental decision by Slade J (as he then was) some 35 pages long, and it covers with that Judge's usual thoroughness and care all the well-known authorities such as Leigh v Jack (1879) 5 Ex. D.264, Williams Brothers Direct Supply v Raftery 1958 1 QB 159,



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Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and B.P. Ltd 1975 QB 94 and Treloar v Nute 1976 1 WLR 1295, as well as about a dozen other authorities.

Mr Pearlman referred me in particular to Slade J's restatement of the basic principles relating to the concept of possession commencing at page 470:-

"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a simple possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd v Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v S Don Manis Appu* the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the *Red House Farms* case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.JJ. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v Liverpool College* (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one,





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because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title, if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgement, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."

Mr Pearlman also referred me in particular to two further passages at page 476:-

"In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner."

And lower down the same page:

"Against this background, it is not in the least surprising that over many years in cases such as *Leigh v Jack*, the *Williams* case and *Tecbild Ltd v Chamberlain* the courts have been reluctant to infer the necessary animus possidendi on the part of a squatter, even where the acts relied on could have sufficed to constitute factual possession."

Application of law to Common Land

No authority was cited to me, and so far as I am aware there has been none, on the application of the principles set out above to a case concerning common land. It seems to me almost to go without saying that it must be much more difficult to acquire a possessory title to open moorland comprising over 2000 acres (as in this case) than to an enclosed field of some 3.144 acres (as in *Powell v McFarlane*). The matter is however only one of degree; the principles to be applied are the same:-

1. The claimant must adduce compelling evidence not only that he had the necessary animus possidendi, but that he made his intention clear to the world;





2. The acts relied on must be unequivocal, in the sense that they were necessarily referable to an intention on the part of the claimant to dispossess the true owner, and to occupy the land wholly as his own property.

The Claimants' Witnesses

Miss Cameron called two witnesses:-

- i. Mr John Michael Sheard, FRICS, Agent of the Bolton Abbey Estate of the Trustees of the Chatsworth Settlement from 1970 and before that an assistant to the Agent from 1966. Mr Sheard's Statutory Declaration has already been referred to.
- ii. Mr Hey, Agent for the Estate for 30 years down to 1970.

None of the Claimants gave evidence.

The Objector's Witnesses

Mr Pearlman called:-

- i. Mr Lockyer.
- ii. Dr Spence, the expert witness mentioned above, whose Proof of Evidence appears at Appendix A hereto. This evidence was accepted in toto without cross-examination.
- iii. Mr Michael Currer Gill, the other expert witness called on behalf of Mr Lockyer. His qualifications appear in his Proof of Evidence, which is also annexed hereto: see Appendix B.
- iv. Mr B D T Harker, a retired farmer who has known the Moor since 1921. He is registered in the Rights Section of the register as co-owner of 104 sheep gaits over the whole of the common: see Rights Entry No. 23.
- v. Mr S R Pattinson, a small-holder in Grassington. His father, grandfather and ancestors had sheep rights on the Moor, and he had rights from 1953-1961, but has no registered rights.
- vi. Mr Thomas Kitching. He and his father, also Thomas Kitching are registered in the Rights Section as owners of 84 and 35 sheep gaits over the whole common: see Rights Entries No. 1 and 2.

Documentary Evidence

The greater part of the documentary evidence was common to both sides. I shall not attempt to separate that which was produced by each party. I shall however deal first with the documents relating to the historic possessory title, and at a later stage with those relating to the modern possessory title.





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Historic Documents (1774 to 1910)

- i. 1774 4th February. Transcript of a letter from William Brown and 20 other freeholders and proprietors of arable land and uninclosed common moors and wastes of Grassington to Sir Anthony Abdy, the Duke's Auditor: see photocopy annexed hereto at Appendix C (the "Abdy Letter").
- ii. 1788 Grassington Enclosure Act.
- iii. 1810 2nd November Overseers Valuation for Grassington.
- iv. 1829 Rating Valuation.
- v. 1830 18th April. Agreed settlement of boundary dispute executed by the Duke and some 20 others.
- vi. 1846 9th July. Tithe Apportionment Award.
- vii. 1857. Draft Application for enclosing Moor with accompanying letter dated 23rd July 1857 from Joseph Mason to William Curry.
- viii. 1861. Valuation and Stinted Herbage Book for Grassington Moor prepared by Robert Hartley.
- ix. 1910. Valuation under Finance (1909/10) Act, 1910.

Summary of Effect of Historic Documents

- i. I shall leave the Abdy Letter to be dealt with later.
- ii. Neither party placed any reliance on the Enclosure Act of 1788. Mr Pearlman however referred me to the bottom of page 18, where it is recited that the Duke is Lord of the Manor of Grassington, and as such is entitled to all Mines and Minerals, and enacted that nothing in that Act should prejudice the Duke's interest as Lord of the Manor, with the Coal Mines and other mines and minerals within the pastures thereby intended to be inclosed.
- iii. In the 1810 Valuation the Duke is listed as Proprietor of a dwelling-house and half-a-dozen small items of pasture and woodland. Then as the very last item on the list, the Duke is named as Proprietor of the Lead Mines, which are rated at £450. No other property on the list is rated in three figures, and at least half are in single figures. It is quite clear therefore that, at least for rating purposes, the Lead Mines were in 1810 by far the most valuable property in the whole of Grassington.
- iv. In the 1829 Valuation the Duke is listed as Proprietor of 22 items, including two relating to the Moor: one a dwellinghouse valued at £1, and the other "Cupola" at £9.10.0. There is reference to a Coal Mine, but none to the Lead Mines. As to the Cupola, which was a Mill building, see later.
- v. Miss Cameron placed some reliance on the Deed of 18th April 1830 whereby a dispute which had arisen concerning the boundary between the moor waste land and common of the Manor of Grassington and the moor waste land and common of the Manor of Hebden was compromised. This deed had spaces marked out on it for execution





by over 40 parties, but was in fact executed by about 20. I find nothing in it which assists me in deciding the present case.

vi. In the Tithe Apportionment Award of 9th July 1846 the Moor is estimated as containing 1987 acres 2 roods and 16 perches. The Duke is listed as the owner of 10 properties. "The Duke of Devonshire and others" are listed as owner of the 1987 acres 2 roods and 16 perches comprising Grassington Common and Priest Tarn (2 acres). This entry shows that the Duke was not the sole owner of the Moor. Who "the others" being referred to were is a matter for speculation.

vii. Miss Cameron placed some reliance on the draft Application for enclosing the Moor in 1857 as containing admissions of the Duke's right to the soil of the Moor. When one appreciates that the writer of the covering letter (Joseph Mason) was the Duke's Agent and the recipient (William Curry) the Duke's Solicitor, this contention falls to the ground. Indeed in the Letter Mr Mason writes that he has consulted some of the principal proprietors on the subject and they were willing to proceed with either stinting or enclosing; and that he would endeavour to obtain the signatures of as many as may be necessary "to enable us to proceed". As the matter did not proceed, it may be that he failed to obtain the necessary signatures. Instead of containing an admission that the Duke was owner of the Moor, these documents together can be read as providing an acknowledgment that the proprietors of the Moor were persons other than the Duke.

viii. The Valuation and Stinted Herbage Book of 1861 is a comprehensive document, which I understand was to some extent relied on by Mr Commissioner Hesketh when determining disputes in the Rights Section of the Register in 1983. It seems to me clear that instead of agreeing to the proposed application for enclosing the Moor, all persons concerned agreed to the stinting of the Moor in accordance with the provisions of the Stinting Book. The recitals with which this document commences recite (at page 1) that Grassington Moor contains 1987 acres 2 roods and 19 perches; that it is undivided and also unstinted; that it has been considered expedient that the Moor should "by the aid and consent of the Land Owners" henceforth be stinted. Then (at page 3) proposed Rules and Regulations are set out, concluding (at the top of page 4) with the proviso that such Rules and Regulations "shall be from time to time made at a Meeting of the said proprietors of the said Moor". Next (at the bottom of page 4) there is the declaration that nothing therein or in such rules and Regulations shall prejudice the right of the Duke as Lord of the Manor to the minerals game and shooting, and that the Duke may hold all such mines and minerals and shooting rights as if the stinting agreement had never been made. I find in this document the clearest possible indications that still in 1861 the Proprietors of the Moor were persons other than the Duke, and that the Duke enjoyed only the gaming, shooting and mineral rights.

ix. Finally, I come to the Inland Revenue Valuation of 1910. Here there are several entries for the Duke, none of which call for any particular comment. There are however two entries on the last page "Proprietors of Grassington"; the first is "Stinted Common - Moor 1987²/₁₆ acres" with a capital value of £4,700 and an agricultural value of £2,500; and the second relates to a parcel of Mire of something over 8 acres and valued at £50. It seems to me the difference in the main assessment between the capital value of £4,700 and the agricultural value of £2,500 can be accounted for by placing £2,200 on the minerals. In any event this Valuation confirms that as late as 1901 persons other than the Duke were recognised as the Proprietors of the Moor.



The Abdy Letter

The reservation in the Conveyances of 1604 of the minerals to the Duke were limited to (i) the mines (ii) liberty to dig and search for the same (iii) power to convert all such lead copper coal freestone and slate as should be found and (v) reasonable and convenient egress to carry the same away. No express power was reserved to smelt minerals on the Moor, and no right was reserved to take peat from the Moor for the smelting process. By the middle of the 18th Century both these actions were being taken, a smelt mill having been built at Coalgrovebeck, on the Moor. This is the background to the Abdy Letter of 1774, when William Brown and twenty other freeholders and proprietors of the unenclosed commons moors and wastes of Grassington wrote to the Duke's Auditor complaining, first about the erection of the smelt mill, and second about the removal during the then past 14 or 15 years of several thousand cart loads of turf annually off the Moor for the purpose of smelting ore. The context in which this letter was written is explained in Mr Gill's Proof of Evidence (Appendix B hereto).

Excessive Exercise of Rights

Miss Cameron submitted that the acts complained of in the Abdy Letter were an assertion by the Duke of the right to use the soil of the Moor qua owner; that no action was taken by the freeholders thereafter; and that in consequence the rights of the freeholders were barred in or about 1779 or 1780, after the expiration of 20 years from the commencement of the excessive use.

Mr Gill's evidence makes it clear that the whole process of providing fuel for smelting was changed after the Abdy Letter. Under the leases granted thereafter, the miners were required to supply their own fuel: see eg the Letter dated 11th August 1774 from George Bradley, the Duke's Barmaster, to Abdy (Appendix B at the bottom of page 10). It appears that the miners reverted to the use of chopwood, as had been the practice until 1759. Where peat was used, it was paid for: see eg Appendix B at the bottom of page 16, showing that in the period June to November 1780 one mining syndicate "Paid freeholders for liberty to get turf to smelt 13 ton 8 pigg at 3d per ton".

The Erection of Buildings on the Moor

Whether any action was taken following the Abdy Letter concerning the complaint about the erection of the smelt mill on the Moor is less certain. In a letter dated 30th September 1774 Mr Bradley wrote to Abdy about a Mr Swaile "who continues very troublesome". In particular "The said Mr. Swaile advised the Freeholders one Court Day that if ye Duke of Devonshire should give orders for any buildings to be erected upon the common for the use of the mines he would advised them to be pulled down and the Duke might bring an action against them if he pleased. To this advice the Freeholders gave no answer to Mr Swaile while I staid.": Appendix B page 12. The same Mr Swaile in 1787 endeavoured to have a clause inserted in the Enclosure Act "obliging his grace to pay for all cattle that is injured by the Mines": Appendix B page 23. By the 16th June 1782 however the numerous problems affecting the mines had begun to be resolved. By letter of that date Bradley wrote to Abdy:- "We are all at present at peace with respect to the mines, and the storm that lately threatend is totally blown over.": Appendix B page 18. It is clear however from that letter that the damage done by the fumes from the smelt mills remained a serious problem.



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The Coalgrove smelt mill remained working until 1792, when it was replaced by the Cupola Mill (which was coal burning). The Cupola Mill continued working until nearly the end of the 19th Century.

A peat house had been erected on the Moor in 1759, but there is no evidence as to how long it remained.

A miners cottage or cottages was or were erected at some date as to which no evidence was given. Perhaps this was the dwellinghouse on the Moor valued at £1 referred to in the 1829 Valuation.

When, after the 1939-45 War, compensation was paid by the government for damage to the buildings on the Moor during military operations, two sets of buildings were referred to:-

- a. Moss House, of which the grey slate roof 12 yards by 4 yards, was destroyed.
- b. Set of roofless stone buildings for which compensation was claimed purely for the value of the stone.

The Intention of the Duke (Historic Possessory Title)

The evidence shows that various buildings were from time to time erected on the Moor, and were allowed to remain thereon for a considerable period of time. It may well be that after a particular building had been in existence for 20 years (or some other appropriate period of limitation) the freeholders of the Moor would have been statute barred from taking action to have it removed. This however is a very different proposition from concluding that the Duke thereby established a title by adverse possession to the whole Moor. I find that the sole purpose for which these buildings were erected by the Duke or his lessees was to further their mining interests. The only intention which I impute to the Duke in erecting or allowing or procuring these buildings to be erected was the exploitation of his mineral rights. I do not impute to the Duke any intention thereby to assert a possessory title to the Moor as a whole. I conclude that on the historic evidence the Duke never had the necessary animus possidendi required to dispossess the true owners of the Moor. I therefore reject the claim based on the historic possessory title.

The Modern Possessory Title

To establish the modern possessory title, Miss Cameron relied principally on the evidence provided by four classes of document:

- i. The War Damage Claim;
- ii. The Grant of a pipe-line across the Moor;
- iii. Various Wayleaves;
- iv. Correspondence concerning access for various purposes.



The War Damage Claim

In November 1947 the Duke's Agent, Mr Hey, put in a claim for the damage caused by military operations on the Moor. I have already mentioned this above. The total claim was for £184.15.0 but this claim was compromised at £149.15.0. Mr Hey was acting not only for the Duke but for the Grassington Moor Sheepkeepers, and he had their authority to receive payment of the agreed sum of £61 for damage to the surface of the Moor. The £149.15.0 claimed included two items which were for damage outside the Moor. On the Moor, the major items were £45.10.0 in respect of Moss House, and £100 for Coal Grove Buildings - "Set of roofless stone buildings shelled to rubble". Both Moss House and Coal Grove Buildings were connected with mining activities. It is therefore natural that the Duke should have received the compensation for the damage to the former and destruction of the latter. The same applies to another item under the heading Coal Grove: Damage to protection wall to shaft £3.15.0. This only leaves one outstanding item: Moor Gate, where a total of £5.10.0 was claimed for re-setting and repairing the gate, and rebuilding 8 yards of fence wall. This claim alone should perhaps have been made by persons other than the Duke.

The Pipeline Grant

In 1965 James Dodds and Brown (Surveyors) on behalf of Imperial Chemical Industries Limited ("I.C.I.") commenced negotiations for the construction of an Ethylene pipeline across the Moor. They corresponded with Mr Hey, as agent for the Chatsworth Trustees, and there is no doubt that Mr Hey in such correspondence represented to them that the Trustees were the owners of the Moor. When the formal Deed of Grant came to be executed on 12th October 1967 it contained a recital that the legal estate in the land under which the pipeline was to be laid was vested in the Duke. For this grant, the Trustees received £1,068.

At the same time as the correspondence with Mr Hey, James Dodds and Brown were also corresponding with Mr O P Jacques, Secretary of Grassington Sheepkeepers Association, and separate compensation was agreed with that Association in the sum of £434. The letter offering such compensation sent to Mr Jacques was accompanied by a document entitled "Schedule of Condition & Particulars. Prepared by James Dodds & Brown ...". It relates to "Grassington Moor. Open Moorland", and there is a reference to the mineral workings and care to be taken in dealing with the mineral heaps en route. What is significant in this Schedule is the entry under the heading Owner. This reads as follows:-

"Chatsworth Trust. Minerals etc.
T. K. Blackburn Esq. Sporting.
Minerals leased to Globe.
Grazing Grassington Sheep Keepers
Secretary A P Jacques Esq"

Accordingly it seems to me that although Mr Hey represented to I.C.I. that the Duke was the owner of the land over which the pipeline easement was being granted, so far as Mr Jacques and the sheepkeepers were aware, the Duke was only being compensated as owner of the Minerals.



The Wayleaves

- i. Yorkshire Electricity Board. Between 1955 and 1957 there were a series of documents entered into by and letters between the Board and Mr Hey relating to the placing of electric cables and lines over or under the Moor. These all related to the supply of electricity to the Lead Mines.
- ii. Post Office Telegraphs. In December 1955 Mr Hey signed a consent to the placing of telegraph posts on the Moor. This related to the telephone line to the Mineral Flotation Plant at Coalgrove Beck Lead Mine.

Correspondence relating to access to the Moor

- i. 1971/72. Correspondence took place between Malham Tarn Field Centre and Mr Sheard concerning permission to take students to inspect the Mine workings. Mr Sheard wanted to impose a charge for this, and it was not proceeded with.
- ii. August 1972. The BBC sought Mr Sheard's permission to film sequences for a children's TV serial by the old lead mines. They paid £15 a day for 3 days for this facility.
- iii. 1977. Permission was granted by Mr Sheard to Bradford University for a small party of students to collect plant specimens on the Moor.
- iv. 1979. Correspondence between Mr Sheard and Pennine Land Rover Club concerning damage caused by unauthorised use of the Moor for Land Rover trials. £100 was paid. Mr Harker's evidence on this matter was that the cars were using the mineral roads.
- v. 1983. Request granted by Mr Sheard to Nature Conservancy Council for two contract workers to map the vegetation on the Moor.
- vi. 1979/1980. Correspondence and Minutes of Meetings between Mr Sheard and Yorkshire Dales National Park Committee concerning the setting up of a "Mining Trail" over the Moor, to satisfy the growing interest of the public in industrial archaeology. This required (inter alia) the placing of a safety grid over Union Shaft at a cost of £500, of which the Committee were to pay £450 and the Duke's Estate £50. The Committee were also to pay not more than £750 in the provision of map boards and indicators on the trail.
- vii. Another similar instance was the shooting at some uncertain date of scenes for the film Casino Royale around the lead workings. No correspondence was produced concerning this, and there was no record of any payment being made.

Mining Activities on Moor

Mining was resumed to a limited extent after the 1939/45 War and continued until about 1960, although at the end of the period it was limited to the recovery of minerals from existing spoil heaps. A Mining Lease was granted by the Duke as late as 1st February 1950, and was still subsisting at the date of the pipe-line negotiations in 1965.



Notices on Moor

In reply to questions by Miss Cameron as to whether they had seen "Keep Out" or "Private" notices at various points on the Moor, Mr Harker, Mr Pattinson Mr Kitchingall agreed that they had seen notices during and for a period of some years after the 1939/45 War but that they read "Keep out. Unexploded Bombs" or words to that effect.

Who owns the Moor?

i. An extract from the Minute Book of Grassington Sheepkeepers Association was produced in evidence, relating to a Special Meeting held on March 12th 1957, at which members of the Association met with representatives of the NFU, including a Mr Fewtrell who had come up from London. The Minute commences with the Chairman explaining that a deputation had been on the Moor to look at the damage caused by the flooding, and continues as follows:

"Mr Fewtrell gave an outline of the position as he sees it. The Moor belongs to the Freeholders of Grassington and he suggested that the claims should be made against the Chatsworth Estates, who own the mineral rights of the moor; and he thought there was a strong case."

ii. In response to the question "Who do you think is the owner of the Moor?" Mr Harker and Mr Pattinson both replied "The freeholders", and Mr Kitching replied "The Parish of Grassington".

Conclusions on the Evidence (Modern Possessory Title)

I have already rejected the claim based on the historic possessory title. As regards the modern possessory title, my conclusions on the evidence are as follows:-

i. As regards the War Damage claim, the Duke received compensation for the mining buildings and the sheepkeepers the compensation for damage to the surface. The only doubtful item was the £5.10.0 paid to the Duke in respect of the Moor Gate and 8 yards of wall. I am prepared to treat this as being de minimis, and also as being equivocal.

ii. As regards the pipeline grant although Mr Hey represented to I.C.I. that the Duke was the owner of the part of the Moor affected thereby, this representation was not "made clear to the World". So far at least as the sheepkeepers were concerned (and they form a considerable part of the local community) the compensation which the Duke received was being paid in respect of his mineral interests.

iii. The various Wayleaves all related to mining activities which were still continuing.

iv. The majority of the correspondence relating to access concerned the lead mines and the mine workings. The only significant act which took place more than 12 years ago was the payment of a total of £45 by the BBC for filming "by the old lead mine". It is true that in his correspondence and dealings with the National Park Committee in 1979/80 Mr Sheard began to assert that the Duke was the owner of the Moor. I have not however thought fit to go into this correspondence in detail, since it is too recent to be of any significance.



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Decision: Modern Possessory Title

I conclude that the various acts relied on to establish the modern possessory title, in so far as they took place more than 12 years ago, either were done without the necessary animus possidendi or were at least equivocal or if unequivocal were done in a manner which did not make the Duke's intention clear to the World. It follows that I reject the claim based on the modern possessory title.

Conclusion

Miss Cameron submitted that if I rejected the claim of the Claimants (as I do) the only alternative finding open to me was to hold that the Public Trustee was the owner under the provisions of Parts IV or V of Schedule 1 of the Law of Property Act, 1925. Although I agree with her that this is the only positive alternative, Mr Pearlman limited his case to opposing the claim of the Claimants, and did not pursue any affirmative claim.

In these circumstances I have no hesitation in giving a decision in a form which has commonly been adopted by Commons Commissioners in other cases as follows:-

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

14th

day of

April

1988

Marti Rott

Commons Commissioner

I, Richard Turfitt Spence, of 120, Beckett's Park Drive, Leeds LS6 3LL make the following submission.

I am a graduate in History of University College, London, with the degrees of Bachelor of Arts (1951) and Doctor of Philosophy (1959), and the Postgraduate Certificate in Education (1952). I have been Senior History Master at Arnold School, Blackpool; and Senior Lecturer in History at the City of Leeds and Carnegie College of Education and at Leeds Polytechnic. I am a past President of the Leeds Branch of the Historical Association and am currently an Honorary Lecture Secretary and member of Council of the Yorkshire Archaeological Society.

The title of my doctoral thesis is 'The Cliffords, Earls of Cumberland, 1579-1646: a study of their fortunes based on their household and estate accounts.' The main sources for this were the Bolton MSS and the Londesborough MSS at Chatsworth, and the Skipton Castle MSS then in the castle and now at the Yorkshire Archaeological Society's headquarters at Claremont in Leeds. I am writing a detailed study of the Earls of Cumberland, largely based on those manuscripts and on the Curry Papers which are now also at Chatsworth. I have published four articles arising from these researches in Northern History and another in the Transactions of the Cumberland & Westmorland Antiquarian & Archaeological Society. I have lectured on the Cliffords and related topics to historical and other societies, including the Yorkshire Archaeological Society, the East Yorkshire Local History Society, the Bradford and Carlisle branches of the Historical Association, and the Leeds Metallurgical Society, and to the Local History Seminar at the University of Leicester.

Historical Background to the Documents

George, 3rd Earl of Cumberland (1558-1605), whose large estates in Craven included the lordship of Grassington, was a distinguished courtier, the Queen's champion, and the greatest of the Elizabethan amateur privateers in the war against Spain, 1585-1604. When he became Earl in 1579 he was one of the wealthiest of the Elizabethan nobility, with a net rental of £1,821. Because of his extravagance and from 1586 his heavy losses in his privateering, on which he claimed he spent £100,000, he ran up huge debts. In an effort to clear these debts he raised over £35,000 from his estates between 1602 and 1605 by sales and leases, and yet still passed to his successor, his brother Francis, 4th Earl, a heavy burden of indebtedness. In George's own words, he had "throwne his land into the sea."

On 2nd May 1596 Earl George's recorded debts, mainly to London merchants, were £28,300, on which he owed ten per cent annual interest, and his unrecorded debts would be several thousand pounds more. The interest on these loans exceeded his net yearly income. To lessen these major London debts, he turned to his Craven estates. He negotiated mortgages with 335 tenants on twenty-one manors. The form of the mortgage was that the Earl, in exchange for a fine usually of forty years' ancient rent of the tenement, granted the tenant a lease for 5,000 years, reserving the right to redeem the mortgage upon full repayment on specified dates. After redemption, the Earl would again have seisin and could negotiate a new tenure. The highest percentage of mortgages was in Grassington, 29 out of a possible 38. Altogether the Earl raised £8,775 13s.6d. on the mortgages and, with some minor sales of land, was able to reduce his London debts by 13th September 1597 to £19,200.

However, his last and greatest privateering expedition, to Puerto Rico in 1598, was a financial failure. By formal indentures the Earl deferred repayment of his Craven mortgages twice (see Document I) and finally avoided repayment by inclusion of those sums in the fines he negotiated for long leases and fee farm grants with his tenants from 1602-1605, part of the £35,000 he raised from the estates. In all the indentures he granted, Earl George's brother and officers were associated, especially because he had assigned most of his Craven estates in 1597 to them to ensure his debts were paid and to safeguard them as surties for his borrowing.

Document I Indenture (and mortgage) to Thomas Hewitt 25th September 1597

Hewitt, exceptionally, paid 50 years' ancient rent for the 5,000 years lease of his messuage and two oxgangs, contributing £36 13s.4d. to the £888 15s.4d. lent the Earl by the Grassington tenants. The indenture lists in general terms his holdings in the arable, meadow, stinted and unstinted pastures and moors of Grassington.

Repayment of the loan was stipulated for 3rd February 1601/2 and 25th June 1602, in equal parts. However, the Earl was unable to leave London until April 1602 and then faced lengthy negotiations with his tenants over new leases. Consequently, he persuaded the tenants to agree to deferment of the repayment twice, by indentures dated 1st February 1601/2 and 8 January 1604 (Chatsworth, Curry Papers L/28/1), the latter requiring him to settle with his Grassington tenants on 3rd February 1603/4 and 25th June 1604.

Document II Samuel Peirce's Survey of Grassington (1601-1603)

This thorough survey gave an up-to-date valuation of all the holdings in Grassington, on which the 1604 grants were based. Thomas Hewitt's message is number 30. The survey lists in detail his holdings: his dwelling house and adjoining lands, his meadow, arable and meadow in West and East Fields, his 16 beastgates in the common, stinted pasture and 40 sheepgates in the Out Moor, with their values, over the rent of £0 14s.8d.

Altogether, Peirce's survey give an almost comprehensive picture of the township of Grassington, its occupants, dwellings and farming. The specific detail available here was not repeated in the 1604 grants, but it would be common knowledge to Earl George, his officers and the tenants and cottagers, and what was included in each grant would be well-understood by the parties involved.

Document III Indenture to Francis Hewitt 2nd May 1604

This indenture differs in one respect from most of the other 1604 grants in that it was Thomas Hewitt's grandson (a mature man) who took over the property. Hence, Francis would have satisfied Thomas Hewitt for the mortgage money he had lent the Earl in 1596-7, and this sum (as in the other grants) was included in the price of £160, with Francis paying in cash £123 6s.8d.

Otherwise, this indenture exemplifies the 31 grants made mainly on 2nd May 1604. Francis Hewitt now owned "for ever" the message and its two oxgangs of land described in Peirce's survey; two other additional parcels of arable and meadow equal to half an oxgang; "the freehold and soyle" of his message's share of the stinted pasture and other enclosed commons, wastes and moors; "the freehold and soyle" of his share of all the other commons, wastes and moors of Grassington "now not enclosed but lying open"; and, further, "comon of pasture & comon of turbary in upon & throughout all the mores & Comons of Grassington" previously enjoyed by Thomas Hewitt, as specified in the 1604 survey. As in all the grants, Earl George maximised his receipts by reducing the rent charge from £0 14s.8d. to 2d. a year.

In effect, for an extra £4,400 in cash, Earl George had transferred the ownership of the arable, meadow and pasture lands of most of Grassington township to the farmers, and the process was virtually completed later by similar grants to the cottagers listed in 1604. His reservation, first, of the mineral deposits on the commons, wastes and moors with liberty to search for, dig and convert the same and rights of access, and, second, of hunting, shooting and fishing rights created

an unusual yet clearly defined separation of rights in Grassington township. The grantees, and their successors, now owned with their messuages, gardens, crofts, arable and meadow lands all the mineral deposits lying beneath them, and the freehold and the soil and rights of turbary on all the commons, wastes and moors of Grassington with full rights of access for themselves and their animals onto and around them. On the other hand, Earl George and his successors owned the mineral deposits beneath the soil of the commons, moors and wastes only, with full access rights to work them, and also the hunting and hawking rights over the soil. Unlike the 1597 mortgage indentures, in the 1604 grants the Earl did not offer recompense for damage done by working the ores in the pastures. The potential conflict of interest between pastoral farming and extractive industry inherent in the 1604 indentures was to lead to litigation during the eighteenth century.

Document IV Indenture to Henry Ibotson 1638

This indenture of 18th June 1638 shows that, a quarter of a century after Earl George's grants, the Grassington freeholders were accustomed to selling parts of messuages and the freehold and soil of both the stinted pastures and of "all other the out Comons mores & wastes of Grissington lying open & abroad" as detached pieces of property, no longer tied (as in 1604) to the oxgang holdings in the arable fields. Furthermore, such sales included "all waies pathes waters wods liberties esamentes freledges commodities & appertances" belonging to any of them, as the vendor was entitled to do by the terms of the 1604 grants. This indenture exemplifies the freehold market in Grassington properties and rights as it developed during subsequent decades. Gradually the details, here already shortened, became even more abbreviated because they were common knowledge to the Grassington farmers and needed no repetition, especially as previous indentures were available as proof of right title.

This Indenture made the xvth day of September In the Thirtie and nyne yere of the reigne of our Sovereigne Lady Elizabeth ... Betwene the Right honorable George Erle of Cumbreland lord of the honor of Skipton in Craven lord Clifford lord of Westmerland Vypointe & Vescy, and of the noble order of the garter knight William Inglebie of Ripley within the countie of Yorke Esquier and William fferrand of Carleton in Craven in the said countie of Yorke gentleman on thone partie, And Thomas Hewitt of Girsington als Girston in the said countie of Yorke husbandman of thother partie Witnesseth that..." the Earl, Inglebie and ferrand... "for & in consideracon of the some of Thirtie six pounds thirteene shillinges & fower pense..." paid to them by Hewitt..."have dymysed Granted and to ferme letten..." to Hewitt ... "All That Mesuage ffirme or Tenement with thappertunces one barne or lathe one garden adioyninge and two oxganges of land medow & pasture... now in the tenure or occupacon of the said Thomas Hewitt his assigne or assignes... of the yerely rent of ffowertene shillinges eight pense... To have and To holde the said mesuage... duringe tyme and terme of ffyve thowsand yeres now next ensuing... provided allwaves and upon condicon That if the said Erle William Ingleby & William fferrand ther heires executors or assignes or any of them do & shall well & truely content & pay or cause to be well & truely contented & paid unto the said Thomas Hewitt his executors administrators or assignes the some of Thirtie six poundes thirteene shillinges & fower pense... att or in the Court House or tooille boothe in the burrow of Skipton in Craven in maner & forme followinge, Thatt is to say Eightene poundes six shillinges & eight pense in & upon the third day of ffebruary which shalbe in the yere of our lord god one thowsand six hundreth & one, And in & upon the five and twentie day of June then next following other Eighteene poundes six shillinges eight pense residue... Then this present lease & dymise to cease end & utterly determyne".

[Signed and Sealed] George Cumbreland William Ingilby William fferrand

This Indenture made the xviiiith day of June Anno die 1638. & in the xiiiith yeare of the Raigne of our soveraigne Lord Charles by the grace of god king of England Scotland ffraunce & Ireland defender of the ffaith &c Betwene Henry Ibotson of Grissington in the County of York husbandman & Elizabeth his wiffe & Thomas Leyland of the same husbandman of thone partie And Robert Holgate of Hebden in the said County husbandman of the other partie Witnesseth that the said Henry Elizabeth & Thomas for & in consideracon of the soome of Tenn pounds Thre shillinges & foure pence of lawfull English money unto Wilfray Burton of Dent already paid by the said Roberte for the debt of the said Henry Ibotson have given granted bargained & sold and by these presentes do Give grant alien barqaine sell infeoffe & Confirme for & from them their heires & assigz for ever unto the said Robert Holgate his heires & assignes One parcell of meadow lying & being within the felde of Grissington in a place called ffar wyeths inter the lands of George ffrankland & Myles ffrankland their conteyning by estymation half an acre be itt more orles and the ffrehold & soile of all that inclosed & stinted pasture of Grissington aforesaid Called losgillbanke according to the rate of one oxgang of land meadow & pasture in Grissington and The ffrehold & soile of all that other inclosed & stinted pasture of Grissington called the new pasture And of all other the out Comons mores & wastes of Grissington lying open & abroad According to & after the Rate of half an oxgang of land meadow & pasture in Grissington aforesaid, and Comon of pasture harbage & feeding for beastes & Catles of in upon & through out all the said pasture according to & after the severall Rates aforesaid respectively All which are now in the Tenure & occupacon of the said Henry Ibotson in Grissington And all waies pathes waters wods liberties esamentes freledges commodities & appertances belonging or in any wise used occupied or enioydd to or with the said premisses or any of them, And the reversion & reversions remainder & remaynders therof Together with all the right title interest estate inheritance clayme & demaund of them the said Henry Ibotson Elizabeth & Thomas Leyland their heires executors administrators & assignes of in & to the same fforever To have & to hold the said parcell of land ffrehold soile & Comon of pasture & all singular other the premissz therein grantedd & everie parte & parcell therof with thappertances unto the said Robert Holgate his heires & assignes forever To the onely proper use & behoofe of the said Robert Holgate his heires & assigz forever And the said Henry & his heires the said parcell of land ffrehold soile & Comon of pasture with the pptances herein granted unto the said Robert Holgate his heires & assignes according to thuses aforesaid Against All people shall & will ever more warrant & defend by theise presentes The rente suts forces excepcons reservacons & Coveynants hereafter due & to be done to the right honorable ffrancis Earle of

John Heeler

My name is Michael Currer Gill and I live at 38, Main Street, Sutton in Craven, near Keighley, Yorkshire. By profession I am a Mining Surveyor, but I have also worked in Civil Engineering and Land Surveying in connection with the Saudi Arabian oil industry. Since 1982, I have taken a Bachelor of Science degree in Archaeological Sciences, at the University of Bradford, and I am currently registered as a part-time post graduate student of the University of Exeter, where I am working towards the degree of Master of Philosophy in Economic History. The theme of my dissertation is "Lead Mining in the Pennines, with particular reference to Grassington Moor, Yorkshire".

I have had an interest in the history of mining, especially for lead, since my boyhood and have spent a great deal of time surveying the complex remains on Grassington Moor. I am a former President of the Northern Mine Research Society, of which I have been a member since 1965. At present, I am that Society's Recorder and I represent it on the council of the National Association of Mining History Organisations; of which I am Vice-Chairman, formerly secretary.

During my researches I have been privileged to have access to the mining archives of the Chatsworth Estates, both at Bolton Abbey and Chatsworth. Also, to the private collection of Dr. Arthur Raistrick and material in the Sheffield City Library's Barker and Bagshaw Collections; all of which contain references to mining at Grassington.

I have written numerous articles on lead mining and smelting in Yorkshire, including those on Grassington Moor. I noted the contents of the memorandum, dated 04/02/1774, from the freeholders of Grassington to Sir Antony Abdy, and feel that my evidence may serve to set put it in context.

In explanation, I submit that in the twenty years before the memorandum, the Grassington liberty was in disarray because of the transition of the title from the Earl's of Burlington to the Duchy of Devonshire. This period commenced with the deaths of Richard Earl of Burlington, in December 1753, and the Countess of Burlington, who also managed affairs, in 1758. The Grassington Barmaster, William Peart, also died in Autumn 1754.

The liberty passed to William Cavendish, later to be the 5th Duke of Devonshire, but he was a minor and his affairs were placed in the hands of administrators. During the period 1756 to 1764, a number of mining disputes arose and there is much to suggest that the various agents were not impartial in their dealings with some miners.

From the onset of mining, in the early seventeenth century, the miners and Lord of the Grassington liberty were obligated to each other by a set of Customary Mining Laws. Amongst other things, these defined that the miners should receive wood for their mines and as fuel to smelt their ore in the Lord's smelt mill; for which they paid a duty of one-fifth part of the pig lead. Reference to pages 1 & 2 of the bundle of transcripts and extracts, submitted by me, shows some examples of accounts for getting the chopwood (fuel) from various woods within the Mineral Lord's estates. The wood was sometimes supplemented by coal but there is no mention of peat until 1759, when there was work done on "the new peat house at the Moor Mill".

The Moor Smelt Mill had been built on the Out Moor, by the Coalgrovebeck Mining Company, in 1756 and commenced smelting in October of that year. For anyone other than the Mineral Lord to build and operate a smelt mill within the Grassington liberty was contrary to the Laws and Customs and it was soon purchased by him. It was this mill, rather than the Low Smelt Mill, near the river Wharfe, which was the subject of the complaint about pollution.

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The Marquiss of Hartington took charge of the mines in 1764 and a new and diligent Barmaster, George Bradley, was appointed with orders to set the regulation of the liberty to rights. When the Marquiss became the 5th Duke, in 1770, he then had control of the Duchy's wealth of mining expertise in Derbyshire and it was quickly used to bring the more refractory of the mine adventurers into line. One method was to open a process of consultation about the replacement of the old grants with formal leases, of 21 years duration. There are many notes, in the Duchy archives and the Oakes Deeds, relating to the form of the covenants in the proposed lease and my sheet 3 is most pertinent to this Commission. It was written by a Mr. Barker, a Lawyer and Mine Adventurer, between 1770 and 1773, and clearly states his concern about the rights of the Freeholders.

The petition from the Duke's wood cutters (sheet 4) serves to remind us of the great reliance on chopwood and to show that the mines were in a period of depression. The effect of the latter on the Freeholders is clear from their memorandum; namely that miners were forced onto Poor Relief, which was paid for by them. The rating of lead mines for the poor had exercised legal minds since the time of Elizabeth the first, but they were repeatedly ruled to be exempt. We have now reached February 1774 when matters take on an extraordinary urgency following the memorandum to Abdy. My sheet 5 is a list of the same twenty-one freeholders with their mining interests and it is clear that many had a substantial pecuniary interest in the mines.

Sheet 6 is of little direct interest but serves to show that Barmaster was gathering information on regulation used in the nearby Appletreewick Liberty. In particular, the change of duty rates when miners found their own fuel.

In sheet 7, however, the Barmaster's comments are indicative that the Freeholder's memorandum to Abdy was being taken very seriously. At that time, George Bradley had been Barmaster for 10 years and he would not normally have required any directions from his superiors on a mundane task such as the provision of fuel for the smelting mills.

Sheet 8, in May 1774, relates to a case of working by trespass, but I draw your attention to the generalisation, made by Mr. Thornhill, a major mine adventurer at Coalgrovehead, on the Out Moor.

By August 1774, we see one of the first instances (sheet 10) of the new leases in operation, with Mr. Bradley's comment that Wilkinson's find their own fuel. This is followed, on sheet 11, by an extract from the account book of Messrs Wilkinson & Co. which confirms that, between May and August 1775, they were buying peat.

Returning to September 1774, however, sheet 12 gives an example of the captiousness to which Mr. Thornhill referred. Mr. Swale was a Lawyer, from Gargrave, and he was an instigator of the Grassington enclosure act (sheet 23).

I have included sheet 14 merely as an indication of the urgency with which the changeover from grants to leases took place. By November 1774, only two out of the 80 or so old grants had not been surrendered.

That matters were still not entirely resolved early in 1775, is clear from comments in Sir Antony Abdy's letter (sheet 15) to George Bradley in which he expresses concern about the price not being set for wood. Furthermore, it is clear that the Duke's supply of peat is in some doubt.

By 1780, however, matters are resolved and the extract from the reckoning book (Francis Wardle & Co) for the 3 Meers Mine, at Coalgrove Syke Head, on the Out Moor, makes this clear (sheet 16). Pursuant to the new leases, this

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company was purchasing its own fuel and notes "Paid freeholders for liberty to get turf to smelt 13 ton 8 pigg @ 3d/ton".

The Duke rationalised his smelting operations in 1792 when the Cupola Mill was built on the Out Moor. This mill began to smelt in October of that year, and replaced the Low and Moor Mills. As its name suggests, the Cupola mill was fitted with reverberatory furnaces, which burnt good quality coal imported from the Burnley coalfield.

The remaining sheets 17 to 22 deal with land acquisitions, by the Duke, in the area of the Low Mill which have already been dealt with at length by Mr. Lockyer.



APPEAL C
"The Abby Letter"

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Complaint by Grassington Freeholders to Sir Anthony Abdy K.C. M.
The Duke of Devonshire Steward
Typed copy from Chatsworth 1/11/70 'Copy Memorial of the Freeholders
and Commoners of Grassington', to James 4th February 1774
William Brown and 20 others to Sir Anthony Abdy, Bart. - *Some identified as David Swail*

We whose names are hereunder subscribed freeholders and proprietors of a considerable number of oxgangs of arable land and uninclosed common moores and wastes of Grassington aforesaid on behalf of ourselves and other freeholders and proprietors of the rest of oxgangs of arable land and uninclosed commons, moores and wastes of Grassington aforesaid humbly beg leave to lay before you as well an exact copy of a grant from the Earl of Cumberland Francis Clifford and Wm. Ingleby & their heirs to one Robt. Wilkinson and his heirs as a purchaser of a farm or tenement and one oxgang of land & meadow with the appurtenances situate in Grassington aforesaid and also ~~our~~ ^{several} grievances which we the said freeholders labour under on account of the said lead ore mines within the manor of Grassington aforesaid.

That the whole three scores oxgangs half an oxgang and the fourth part of an oxgang of arable land meadow and pasture and the three scores and five oxgangs and half an oxgang of the Commons moors and wastes of Grassington aforesaid have been granted by the aforesaid Earl of Cumberland Francis Clifford and Wm. Ingilby and their heirs to the aforesaid purchasers and their heirs by indentures bearing date the said second day of May 1604 and contain the same covenants word for word as the annexed copy of a grant to Robert Wilkinson (space) same by different purchasers.

That a smelting Mill has been lately erected on the out moor of Grassington without the consent of us the said freeholders and which has proved a real Damage to us by our Cattle receiving the injurious particles of the smoke ascending therefrom.

That for time immemorial all the lead ore got within the Manor or Lordship of Grassington aforesaid was smelted with chop wood his Graces property until within this 14 or 15 years last past his graces agent or barmaster at Grassington has dug up and got annually several thousands cart load of turf from off the Commons and moores of Grassington for the purpose of smelting lead ore which if continued will in a few years absolutely consume the Turbary to the great disadvantage of us the said freeholders residing within Grassington and also to all other inhabitants of the said Town as burning turf is now and has been our and their chief firing for time immemorial.

That we the said Freeholders and proprietors of oxgangs of arable land commons moors and wastes of Crassington humbly conceive that his Grace the Duke of Devonshire cannot legally erect smelting mills or cottages houses for the convenience of miners on the Stinted pastures or Commons, Moores or wastes of Crassington, nor can he humbly apprehend dig up turf (which is the soil and ~~freehold~~ ^{freehold}) for the purpose of smelting lead ore. That we the ^{said} freeholders of Crassington also humbly apprehend that his Grace the Duke of Devonshire is liable to be rated towards the maintenance of the Poor in proportion to the Estate and interest he has annually arising within Crassington. The poor rates of Crassington for many years past, and at present run very high on account of lead. Miners and their families gaining settlement within Crassington which cannot be avoided.

We the said freeholders humbly beg you'll take the trouble of perusing the annexed copy of the grant and consider the matter and grievances above stated and return us your thoughts upon the same (when most convenient) directed to Mr. Wm. Brown of Crassington and you will much oblige

Sir, your most obedient servant

Wm. Brown

and 20 other names