



In the Matter of High Common, Acomb,
Tynedale District, Northumberland

DECISION

My decision (stating its effect shortly) is as follows:- (1) the land under the 1779 Award passed as to one undivided half to Sir Thomas Blackett as Lord of the Manor and as to the other undivided half to the Proprietors or Occupiers of the lands to which before the Award rights of common were attached, subject as regards both half shares to the rights to take stone as in the Award stated. (2) The Proprietors or Occupiers were a section of the inhabitants of the locality for which a charitable trust could be, and was by the Award established, being a charitable trust which could now appropriately be administered by the Parish Council. (3) Nothing has happened locally since the 1779 Award to alter the ownership thereby established. (4) But the Law of Property Act 1925 by which the legal ownership of land in undivided shares was abolished, has vested the legal ownership of the entirety in the Public Trustee upon trust to give effect (as provided by such Act) to the ownership as established by the 1779 Award, subject to the same rights to take stone as would have subsisted if the undivided legal ownership had continued. The circumstances in which it has become necessary for me to give the foregoing decision and my reasons are as follows.

This reference relates to the question of the ownership of land known as High Common, Acomb, Tynedale District being the land comprised in the Land Section of Register Unit No CL. 6 in the Register of Common Land maintained by the Northumberland 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 J M Clark & Partners Chartered Surveyors of Haltwhistle claimed ownership on behalf of Mr J A Cuthbert. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

The Chief Commons Commissioner held a hearing for the purpose of inquiring into the question of the ownership of the land at Hexham on 17 July 1973 and, at the request of Mr C J Thompson a solicitor representing Mr Cuthbert, adjourned the proceedings to allow him further to investigate the matter. In a letter dated 26 September 1973 Wilkinson Marshall Clayton & Gibson solicitors for Mr Cuthbert said that Mr Cuthbert withdraws his claim and that they believed Lord Allendale is the owner. In a letter dated 11 December 1973, the Trustees of Viscount Allendale's 1949 Settlement (through their Solicitors) claimed to be the owners of the soil of the land as Lords of the Manor or Regality of Hexham and Anick Grange.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Hexham on 4 May 1976. At the hearing, Acomb Parish Council on whose application the registration was made, were represented by Mr W E Rutherford their chairman; and Mr D E Braithwaite and the Rt Hon M W (4th) Viscount Ridley were both represented by Mr T N Reid solicitor of Dickenson Dees & Co, Solicitors of Newcastle upon Tyne.

The land ("the Unit Land" comprised in this Register Unit contains (as appears from the below mentioned Award) about $6\frac{1}{2}$ acres, and is about a mile east of Acomb and a short distance west of Fern Hill Farm buildings, being on the south side of and adjoining the road from Acomb (on the west) to Stagshaw Bank (on the east).

Mr Reid in the course of his oral evidence produced: (1) an assent dated 13 May 1957 by which the personal representatives of W H C Viscount Allendale (he died 16 December 1956)



assented to the freehold property therein described including "The Manors or Regalities ...of Hexham and Anick Grainge or Grange with the members..." vesting in Mr D E Braithwaite and M W Viscount Ridley (3rd Viscount: he died 25 February 1964) upon trust for sale and upon the trusts of a settlement dated 31 December 1949 and made by the said Lord Allendale; (2) an appointment dated 1 February 1965 by which M W Viscount Ridley (4th Viscount) was appointed a trustee of the said assent; (3) the Hexham Inclosure Act 1778 (13 Geo.3.cap.63), and (4) a copy (examined 15 February 1965) of the Award dated 6 April 1779 and made under such Act.

Mr J G McGowan who is now and has been since 1972 Agent for Lord Allendale's Settled Estates at their office at Bywell Stocksfield and at Allenheads in the course of his evidence produced: (1) a plan of Acomb¹ Township in the parish of St John apparently a copy examined in 1839 of a plan signed by Rob K Dawson RE, Assistant Tithe Commissioner; (2) a plan of the Regality or Manor of Hexham and of part of the Manor of Anick Grange; the property of T W Beaumont Esq 1847; (3) a counterpart yearly tenancy agreement of a right of shooting and sporting made by W C B Beaumont (lessor) in favour of J H Cuthbert (lessee), and (4) an account book entitled "Tynedale and Hexhamshire Estate Schedule of Rents 1902 to...(book concludes in December 1907); and (5) Account book 1974 (currently in use).

Mr Rutherford who was born in the Parish 56 years ago, has lived there ever since, been a member of the Parish Council for the last 10 years and chairman for the last 8 years, said (in effect):- The people of Acomb have enjoyed free access to the Unit Land from all time; they have gathered wild fruits and fallen wood for firewood without any let or hindrance, as they believed they have a right to go there, the land being "in common ownership". The Unit Land is now very derelict, although (overall) reasonably flat, it is (as a result of quarrying) very uneven; there is much rough growth, bushes, brambles, coarse grass etc, and some trees. The Parish Council have not attempted to do anything with it, except leave it in its natural state; litter has been deposited there by passing motor cars and rubbish has been dumped, and the District Council have been asked to remove this. People understood the Lord of the Manor have mineral rights (eg to extract coal) but not soil rights. As he remembered it, it has always been very much overgrown, but litter had increased recently.

The 1778 Act recites: "WHEREAS there is a common...part of the Regality or Manor of Hexham...called Acomb Common containing...1100 acres or thereabouts and WHEREAS Sir Thomas Blckett...Baronet is Lord of the said Regality or Manor...and as such is seised of and entitled unto the Soil and Inheritance...other than and except the Mines of Lead... and WHEREAS the said Sir Thomas Blckett...and several other Persons...in respect of ...their...lands...are entitled to right of common in or upon the said Common..." The operative part of the said Act as regards Allotment for Quarries is as follows: "...the said Commissioners...shall also set out and appoint in One or more...Parcel or Parcels ...proper and convenient Freestone Quarries and also Limestone Quarries...as well for the Use and Benefit of the said Sir Thomas Blckett his Heirs Tenants Lessees and Assigns as also for all the other Proprietors and Occupiers of Houses and Lands having Right of Common on the said Common...hereby directed to be divided...their Heirs and Assigns or any of them to be used in or upon the Buildings or Lands in respect whereof he, she, or they are entitled to such Right of Common or upon or for the Use of any of the Allotments to be made and set out by virtue of this Act but not for Sale or any other Purpose; and in case any such Quarry or Quarries shall be so set out the said Commissioners... shall in and by their Award to be made as herein mentioned direct how and in what manner the same shall be wrought for the general advantage of the respective persons interested therein."



The words of the 1779 Award, although for the most part the same as those above quoted from the Act are not exactly the same in that the Commissioners first "set out and appoint" two parcels of land (one being the Unit Land) and then "order and award that the said two parcels of ground shall remain Quarries and be for the use and benefit of the said Sir Thomas Blackett his Heirs Tenants Lessees and Assigns and also for all the other proprietors or occupiers of Houses and Lands having Right of Common on the said Common...their Heirs and Assigns or any of them to be used...(then following the words of the Act)". I can find no direction in the Award as to "how and what manner the same shall be wrought..."

I have to determine whether under the 1778 Act and the 1779 Award, the legal estate in fee simple in the parcels: (a) remained vested in Sir Thomas Blackett as sole owner he being the Lord of the Manor; or (b) passed to Sir Thomas Blackett and "the other Proprietors or Occupiers" in some other and if so what way. The consideration in 1976 of this question is somewhat unreal, because it is unlikely that anyone in 1779 thought the ownership of the legal estate to be of any consequence and because nobody at the 1976 hearing said that the Unit Land would be dealt with any differently (at any rate in the near future) if the ownership were authoritatively determined. Any difficulties there now are in dealing with the Unit Land are, so I understood, not legal, but practical and economic.

Where there has been an inclosure award, and the conflict is between the lord of the manor who was the owner before the award was made, and persons taking under an allotment, the position depends on the construction of the award. The lord of the manor may retain his interest in the legal estate, if it is not by the award otherwise disposed of, see *R. v Inclosure (1871)* 23 L.T. 778 ; or be entitled to a beneficial interest under trust established by the Award, see *Attorney General v Meyrick* 1893 A.C.1. Contra, the award may be read as extinguishing every estate and interest of the Lord of the Manor, see *Simcoe v Pethick* 1898 2 QB 555. An allotment for the benefit of the occupiers of certain land may take effect as a charitable trust for the benefit of a section of the inhabitants of the locality, see *re Christchurch* (1888) 38 Ch.D 520. The effect of each Inclosure Act and award depends on its own particular terms, see *Booker v James* (1968) 19 P.& C.R.525.

The relevant words of the 1778 Act are difficult in that the "Parcels" to be appointed, the "Quarries", and the freestone and limestone to be got from them are used regardless of grammatical rules as antecedents of many of the words that follow, and the words "Heirs and Assigns" are not appropriate in law after the words "Occupiers". The Award avoids some of these difficulties by ordering that the Parcels "shall remain Quarries and be for the use and benefit of...Sir Thomas... and for all the other proprietors or occupiers...". It is not possible to construe these words without doing some violence to the language. I think I must imply a repetition of the words "for the use and benefit of" before the words "all other proprietors or occupiers", and give full effect to the word "and"; that is, the parcels are not only to remain quarries but they are also to be "for the use and benefit" of the persons named or described and their heirs and assigns, a form of words enough I think to pass the whole legal estate. The other sections in the Act seem to me to indicate that the Lord of the Manor in respect of his right of soil in the Common was to get no more than the one-sixteenth share therein mentioned, and I think it natural to ascribe to the Commissioners an intention to appoint the quarry parcels for the whole legal estate. I conclude therefore that the title which the Lord of the Manor had before 1778 was wholly extinguished.



The words "for the use and benefit of the said Sir Thomas Blackett his Heirs Tenants Lessees and Assigns" are I think enough to confer on him a share in the Land.

The words "for all the other proprietors or occupiers..." if they mean that each is to have a share in the land bring up the number of shares to a considerable figure. In 1779, this consequence would not I think have been thought to give rise to any difficulty; but the law has since developed and the inconvenience of a large number of inhabitants being together entitled to land has become apparent. I think I can with the hindsight provided by the observations of the Court of Appeal in re Christchurch supra, treat the words "proprietors or occupiers" used in the Award as showing an intention to establish a charitable trust for the benefit of the section of the inhabitants so described, being a charitable trust such as can now be appropriately managed and administered by the Parish Council on behalf of all those in the locality entitled.

As to how Sir Thomas Blackett and his heirs are to share with all the other proprietors or occupiers; - I have the words in the Award "and also" and the words in the Act "as well for...as also for...", being in each case words appropriate for an equal division.

I conclude therefore that under the 1779 Award the legal estate in these parcels passed as to one half to Sir Thomas Blackett in fee simple and as to the other half to the charitable uses for the benefit of the proprietors and occupiers of the houses and lands therein referred to, subject however to the quarrying rights by the Act and the Award expressly granted.

In my opinion the evidence before me falls short of establishing that either the Lord of the Manor or the special class of inhabitants entitled have since 1798 done anything sufficient to affect adversely the title of the other. Although I had evidence that the Lord of the Manor let the shooting rights, I have no evidence as to how those rights were exercised; in my opinion the inhabitants were not dispossessed merely by the granting of the lease and the receipt by the Lord of the Manor of rent under it. Nor was he dispossessed in my opinion by the use made of the Unit Land as described by Mr Rutherford.

So apart from the provisions of the Law of Property Act 1925 by which legal ownership of land in undivided shares was abolished, my conclusion would be as above stated. However under such provisions all land held in undivided shares before 1926 is now subject to a statutory trust for sale, the trustees of which ~~are~~ ^{are} being those specified in Parts IV and V of the First Schedule to the 1925 Act. Under such Act the Public Trustee is now the trustee, see Part V and re Cotherstone, reported in the Estates Gazette, 1 July 1961. The Public Trustee has never been asked to act, and in the circumstances described at the hearing before me it seems likely that he (unless a sale is contemplated) never will be asked to act. Nevertheless, although this may be productive of some local inconvenience, I am I think led unavoidably to the conclusion that the legal estate in the land is now vested in him.

For the above reasons I am satisfied that the Public Trustee is the owner of the land, and I shall accordingly direct the Northumberland County Council as registration authority to register the Public Trustee as the owner of the land under section 8(2) of the Act of 1965.



I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 23rd day of July 1976

a. a. Baden Fuller

Commons Commissioner