**REF/2007/1124**

**ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY**

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**(1) PETER CHARLES BURTON**

**(2) SUSAN ANNE BANFORD**

**Applicants**

**and**

**(1) ERIC CHARLES WALKER**

**(2) ANGELA WALKER**

**(3) CAROLE ANN SCOTT**

**[representing herself and the estate of ELIZABETH CHAMBERLIN]**

**(4) EDWARD MILLS**

**(5) CHRISTOPHER BALCHIN**

**Respondents**

**Property Address: (1) The Lordship or Manor or reputed Lordship or Manor of Ireby, (2) Ireby Fell, Ireby, Lancashire**

**Title Numbers: LA945262 and LAN6249**

**Before: Mr Simon Brilliant sitting as Deputy Adjudicator to HM Land Registry**

**Sitting at: Victory House, 30-34 Kingsway, London WC2B 6EX**

**On: 27-30 April, 26-30 July and 3 August 2010**

**Site inspection: 22 April 2010**

**Applicants' Representation:** **Mr J Littman of counsel, acting by direct access.**

**Respondents' Representation:** **Mr P Stafford and Ms N Winston of counsel, instructed by Mr M Baxendale of Blakemores.**

**DECISION**

*Lordship of the manor – fell said to be waste of the manor – applicants registered as first proprietors of both the lordship of the manor and the fell – respondents applying for closure of both titles on the ground that the lordship was no longer extant alternatively was vested in themselves – rectification and proprietors in possession.*

Swayne's case (1609) 8 Co Rep 63a, R v Duchess of Buccleuch (1704) 1 Salk 358, Norris v Le Leve (1744) 3 Atk 82, Wright v Doe d Tatham (1837) 7 Ad & E 313, Doe d Clayton v Williams (1843) 11 M&W 804, Rooke v Lord Kensington (1856) 2 K&J 753, Delacherois v Delacherois (1864) 11 HL Cas 62, Corpus Christi College Oxford v Gloucestershire County Council [1983] QB 360, Wells v Pilling Parish Council [2008] 2 EGLR 29, Crown Estate Commissioners v Roberts [2008] 2 EGLR 165, Re B [2009] AC 11, Baxter v Mannion [2010] EWHC 573 (Ch).

Preliminary

1. This decision is divided into the following sections:


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Introduction

2. Mr Burton, the first applicant, is retired following a successful banking career. Ms Bamford, the second applicant is his partner. In 2000 they decided to move north. They bought as their home a substantial 17th century house, since restored by them, with surrounding farm land. It is known as Over Hall Farm, has an area of 39.25 acres, and is situate just to the north of the village of Ireby, Lancashire.[1]

3. Over Hall was built around 1634 by the Tatham family who lived there for just over a century until it was sold to the Marton family in 1737. The Marton family never lived there but let it out. Both the Tathams and the Martons are distinguished North Country families.

4. Over Hall remained in the Marton family for just over two centuries. Following the death of Richard Oliver Marton in 1945, Over Hall was sold in 1947 to Harry Fawcett, who was the occupying tenant. Mr Fawcett died in 1950 and, in 1953, Over Hall was vested in his daughter, Catherine Bracken. In 1995 Mrs Bracken sold Over Hall to Mr and Mrs Brown, who were the occupying tenants. In 2000 Mr and Mrs Brown sold Over Hall to Mr Burton and Ms Bamford.

5. Immediately to the north of Over Hall lies Ireby Fell ("the fell") which consists of over 300 acres of moorland fell. It is registered common land.

6. In the Middle Ages there was a lordship or manor of Ireby. I have to decide

[1] References below to "Over Hall" are either to the house itself or to the estate which has from time to time been owned with the house, depending on the context.

whether this title has survived to the present day.[2]

7. The respondents are all residents of the village of Ireby itself. Mr and Mrs Walker own Bridge House. Ms Scott owns Netherbeck.[3] Mr Mills owns Yewtree Cottage. Mr Balchin owns Christmas Barn. For the sake of convenience I shall refer to the respondents collectively as "the villagers".

8. On 28 September 2000 Mr Burton and Ms Bamford were registered as the freehold proprietors of **Over Hall** under title number **LA874229**.

9. On 10 October 2003 Mr Burton and Ms Bamford were registered as the first proprietors of **the lordship** or manor or reputed[4] lordship or manor of Ireby ("the lordship" or "the manor of Ireby" depending on the context) under title number **LA945262** ("the lordship title").

10. On 21 February 2005 Mr Burton and Ms Bamford were registered as first freehold proprietors of **the fell** under title number **LAN6249** ("the fell title").

11. This reference concerns a challenge by the villagers to Mr Burton's and Ms Bamford's title to **the lordship** and to **the fell**. There is no challenge to their title to **Over Hall**.

12. The villagers' case regarding **the lordship title** is that the lordship has ceased to exist or, if it does still exist, Mr Burton and Ms Bamford do not have title to it.

13. The fell has never been expressly transferred to Mr Burton and Ms Bamford. The villagers' case regarding **the fell title** is that even if the fell were demesne

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[2] A lordship of the manor is the title by which a lord of the manor is known. In many cases the title may no longer have any land or rights attached to it. Because of its lack of physical substance, it is known as an incorporeal hereditament, that is to say an interest having no physical existence.

[3] Until her death on 16 September 2010 Ms Chamberlin, who was the fourth respondent, was a beneficial joint tenant of Netherbeck with Ms Scott. I made an order on 15 October 2010 that Ms Chamberlin's estate be represented in this reference by Ms Scott.

[4] A reputed manor is explained in paragraph 14 below.

land or waste land of the manor this does not avail Mr Burton and Ms Bamford because they do not have title to the lordship.

What is a manor?

14. It will be convenient at this stage to give a brief explanation of a manor. I can do no better than quote from Lewison J's judgment in Crown Estate Commissioners v Roberts [2008] 2 EGLR 165 [7], [9]-[10]:

> [7] As every schoolboy knows (or at least used to know) William the Conqueror defeated King Harold at the battle of Hastings in 1066. Part of his transformation of Anglo-Saxon England was the introduction of the feudal system of landholding. The theory was that all land in England was held of the Crown, radical title having been acquired by conquest. In order to reward his followers, William made grants of land to them. The immediate grantees were called tenants in chief (although they held in fee) and they held directly from the Crown (*in capite*). In return for their grants they were required to provide services. Typically the services would be the provision of knights to serve in the royal army ("knight service"); but they could also include other services, such as carrying the king's banner or holding his head when he felt seasick ("grand sergeanty"). The tenants in chief, in their turn, were able to make sub-grants of lands to others who held of them, again in fee, and again in return for services. These were called mesne tenants, and the process of sub-grants was called subinfeudation. Thus there was created what is called the feudal pyramid, with the king at the apex and the occupants of the land at the base. All land was held of a lord. This was summed up in the maxim; "*Nulle terre sans seigneur*." The status of lordship, including the right to receive the tenant's services, was called seignory.
>
> [9] One of the units of grant was the manor. Manors were known in Anglo-Saxon times. Within the manor the lord kept land for his own

use, known as demesne land. He would also grant out land to tenants, in return for services. Typically these were agricultural services; and the tenants held by customary tenure. Over time this evolved into the form of tenure known as copyhold, and this, in turn, was eventually abolished in 1922. The uncultivated residue of the manor was the waste of the manor and was held by the lord of the manor, although it might be held subject to customary rights, such as rights of common. One of the essential ingredients of a manor was its court. The principal court was the court baron, which amongst other things settled property disputes between the tenants of the manor. It also dealt with succession to copyhold land by recording changes of copyholder. The free tenants of the manor were the jury. The suitors were also drawn from among the free tenants. Since no one can be both suitor and juror, it followed that the court could not be held once the number of free tenants fell below two. As Blackstone put it (2 Bl Comm 91):

"This court is an inseparable ingredient of every manor; and if the number of suitors should so fail, as not to leave sufficient to make a jury or homage, that is two tenants at the least, the manor itself is lost."

[10] In the modern law a manor that has been lost in this fashion is known as a reputed manor".

15. Lewison J could not resist quoting Lord Denning MR's description of the manor in Corpus Christi College Oxford v Gloucestershire County Council [1983] QB 360:

"In mediaeval times the manor was the nucleus of English rural life. It was an administrative unit of an extensive area of land. The whole of it was owned originally by the lord of the manor. He lived in the big house called the manor house. Attached to it were many acres of grassland and woodlands called the park. These were the "demesne lands" which were for the personal use of the lord of the manor. Dotted all round were the enclosed homes and land

occupied by the "tenants of the manor." They held them by copyhold tenure. Their titles were entered in the court rolls of the manor. They were nearly equivalent to freehold, but the tenants were described as "tenants of the manor." The rest of the manorial lands were the "waste lands of the manor." The tenants of the manor had the right to graze their animals on the waste lands of the manor. Although the demesne land was personal to the lord of the manor, nevertheless he sometimes granted to the tenants of the manor the right to graze their animals on it, or they acquired it by custom. In such a case their right to graze on the demesne land was indistinguishable from their right to graze on the waste lands of the manor, so long as it remained open to them and uncultivated, although there might be hedges and gates to keep the cattle from straying. So much so that their rights over it became known as a "right of common" and the land became known as "common land."

In the course of time, however, the lordship of the manor became severed from the lands of the manor. This was where the lord of the manor sold off parcels of the land to purchasers. He might, for instance, sell off the demesne lands and convey them as a distinct property. Thenceforward the land ceased to form part of the manor and was held by a freeholder: see Delacherois v Delacherois (1864) 11 HL Cas 62, 102-103 by Lord St Leonards. But no such conveyance could adversely affect the rights of common of those who were entitled to them as tenants of the manor or otherwise. No lord of the manor could, by alienation, deprive those entitled of their rights over it or in respect of it: see Swayne's case (1609) 8 Co Rep 63a and R v Duchess of Buccleuch (1704) 1 Salk 358."

A summary of some recent[5] dispositions of Over Hall, the lordship and the fell

16. On 23 January 1892 a strict settlement bestowed a life interest in Over Hall, the lordship and the fell on George Henry Marton[6], the son of George Blucher

[5] "Recent" in the context of this reference means within the last 120 years.
[6] Born 1869. Died 1942 "beloved by all his tenants and a host of other friends in every walk of life."

Marton[7] ("the 1892 settlement").

17. George Henry Marton was succeeded on his death in 1942 by his brother Richard Oliver Marton.[8] The death of Richard Oliver Marton in 1945 gave rise to another set of death duties causing the family to sell all its estates, including its principal home Capernwray Hall.

18. On 28 July 1947 Richard Oliver Marton's special personal representatives conveyed Over Hall and the lordship to the occupying tenant Harry Fawcett ("the 1947 conveyance"). There was no express conveyance of the fell to Mr Fawcett in the 1947 conveyance.

19. Mr Fawcett died in 1950. Under the trusts of his will his daughter Catherine Bracken was given a life interest in Over Hall and the lordship. By an assent dated 19 March 1953 ("the 1953 assent") Over Hall and the lordship were vested in Mrs Bracken on the trusts of Mr Fawcett's will. There was no express vesting of the fell in Mrs Bracken in the 1953 assent.

20. On 19 May 1995 Mrs Bracken and the trustees of the will conveyed Over Hall and the lordship to the occupying tenants Mr and Mrs Brown ("the 1995 conveyance").

21. There was no express conveyance of the fell to Mr and Mrs Brown in the 1995 conveyance. But it did include a conveyance of 43 sheep gaits described as *appurtenant to the land hereby conveyed.* A gait (or gate) is a right to pasture sheep or cattle on common land. I was told that five sheep gaits are equivalent to one cattle gait. This right to pasture conveyed to Mr and Mrs Brown was exercisable on the fell.

22. On 1 September 2000, by a transfer of part in form TP1, Mr and Mrs Brown transferred 39.25 acres of Over Hall, including the house, to Mr Burton and

[7] Born 1839. MP for Lancaster 1885-1886. Died 1905.
[8] Born 1872. CMG, DSO. Died 1945.

Ms Bamford ("the 2000 transfer"). The property transferred was identified by an attached plan, which did not include the fell. Accordingly, there was no express transfer of the fell to Mr Burton and Ms Bamford in the 2000 transfer. Nor was there an express transfer of the lordship or the sheep gaits.

23. The reason that a transfer of part was used was because Mr and Mrs Brown owned a total of 77.1 acres at Over Hall. They were retaining for the time being the balance of the farm land.

24. On 21 September 2004 Mr and Mrs Brown conveyed the lordship to Mr Burton and Ms Bamford for £1 ("the 2004 conveyance").

25. As precisely what property has been disposed of at any particular time is of some importance in this reference, the following table summarises the dispositions since 1892:

| DISPOSITION | OVER HALL | THE LORDSHIP | THE FELL | SHEEP GAITS |
|---|---|---|---|---|
| 1892 settlement | • | • | • | |
| 1947 conveyance | • | • | | |
| 1953 assent | • | • | | |
| 1995 conveyance | • | • | | • |
| 2000 transfer | • | | | |
| 2004 conveyance | | • | | |

Control of the fell in recent times

26. The fell is said to be at or near the highest point in Lancashire. A stone wall along its eastern side marks the boundary with West Yorkshire.

27. Mr Stafford, on behalf of the villagers, has suggested that there is no evidence that the fell is still common land belonging to the manor, even assuming the lordship is still in existence. Mr Littman, on behalf of Mr Burton and Ms Bamford disputes this.

28. The use of the fell was regulated by a stinting agreement made on 16 May

1836 ("the 1836 stinting agreement").[9] It describes Oliver Marton[10] as "Lord of the Manor of Ireby". Because Oliver Marton was a lunatic, the 1836 stinting agreement was executed on his behalf by his nephew and heir George Marton.[11] It was entered into with a number of owners and occupiers of local land with rights of common over the fell.

29. The 1836 stinting agreement included the following recital:

*And Whereas it is admitted by all the said persons, parties hereto, that the right of Commonage on the said Fell is that of Pasture only and not of Turbary and that the Freehold and Inheritance of and in the Soil of the said Common or Fell is vested of right in the Lord of the Manor of Ireby aforesaid.*

30. The 1836 stinting agreement is an impressive document setting out by means of a compromise the respective grazing rights of the various owners and occupiers of local land who were parties to it. A schedule to it contains a table of the number of gaits to which each party was entitled.[12]

31. The 1836 stinting agreement demonstrates that, at the time it was made, the fell was firmly under the control of the Marton family and that such control was or purported to be an incident of the lordship.

32. Mr Littman also relies on the appointment of gamekeepers by the Marton family during the nineteenth century as evidence of control by owners of the lordship.

33. The subsequent history of the fell shows that control of it as an incident of the lordship ceased a long time ago. Ms Scott has analysed the village meeting book 1894-1951 and the parish council minute book 1953-1986. I accept her

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[9] "Stinting" means to restrict or limit.
[10] Died insane 1843 without issue. Great-uncle of George Blucher Marton, who is mentioned in paragraph 16 above.
[11] Born 1801. MP for Lancaster 1837-1847. Father of George Blucher Marton. Died 1867.
[12] Oliver Marton's own tenant of Over Hall, Bella Fearnside, was entitled to 8.60 cattle gaits which equate to 43 sheep gaits. These are the 43 sheep gaits referred to in the 1995 conveyance.

evidence that the affairs of the fell had been administered either by the village meeting, the parish council, or an informal committee of the grazers for over a century before Mr Burton and Ms Bamford were registered as proprietors of the fell in 2005. No one exercised any authority over the fell as owner of the lordship during that time.

34. As the table at paragraph 25 above shows, the last express disposition of the fell was in the 1892 settlement. There is no reference to it in the 1947 conveyance, the 1953 assent, the 1995 conveyance, the 2000 transfer, or the 2004 conveyance.

35. In 1978 Mr George Squibb QC, the Commons Commissioner, conducted an enquiry at Lancaster Castle as to whether anyone owned the fell. According to the parish council minutes the chairman attended. He argued that, since this was unclaimed common land, ownership should be vested in the parish council, subject to the rights of those with grazing rights. No one else claimed title to the fell.

36. The chairman was a close friend of Mrs Bracken, so it is a reasonable inference that Mrs Bracken would have been well aware of the enquiry. There was no suggestion on her behalf that she had any claim to the fell.

37. Mr Squibb QC recorded that the chairman of the parish council had no evidence as to the ownership of the fell. In the absence of any such evidence he was not satisfied that any person was the owner of the fell, and ruled that it would therefore remain subject to protection by the local authority under what is now section 45 of the Commons Act 2006.[13] By this enactment the local authority may take any steps to protect the land against unlawful interference that could be taken by an owner in possession of the land.

38. In 1999 cautions against first registration were lodged suggesting that Mr

[13] Formerly, section 9 of the Commons Registration Act 1965.

David Lee Donachie owned the lordship and therefore the fell.[14] Prior to that there had been no public suggestion for over a century that anyone owned the fell or the lordship. It is common ground that Mr David Lee Donachie's claim was lacking in merit.

39. Shortly after Mr Burton and Ms Bamford were registered as proprietors of the fell in 2005 they took control of it. By 1 August 2005 they had put up a sign indicating that they were the proprietors in possession whilst acknowledging the private grazing rights and public rights of way over it. Mr Burton and Ms Bamford have since then regulated the use of the fell, and have granted grazing and shooting rights as they have felt appropriate.

40. I accept Mr Burton's evidence that he has incurred expense and expended time on the fell. He appears to have taken an active and responsible role in managing the fell.

An outline history of the lordship

41. The lordship can be traced back to the ownership of Earl Tostig, King Harold's brother, at the time of Domesday Book in 1086.

42. Mr Burton and Ms Bamford say that by 1534 the lordship was in the ownership of the Redmayne family. By 1598 it was in the ownership of the Stockdale family. Mr Littman, on their behalf, places weight on a letter Sandford Tatham[15] wrote to his cousin in 1830. The letter includes the following passage:

*Robert Tatham, who married Bridget Laurence, must have been contemporary with the Robert Tatham who built Over Hall, in Ireby; a great part of that house the Marsdens have taken down, and it is now a farm house.*

[14] The cautions against first registration are dealt with in paragraphs 83-89 below.
[15] Rear Admiral. His brother Charles was a Lieutenant-Colonel in George Washington's army. Famously contested Wright v Doe d. Tatham (1837) 7 Ad & E 313 to secure ownership of Hornby Castle. Died 1840 aged 85.

*... Robert Tatham, of Tatham and Ireby Hall; who, I believe, married Frances Banister. He was Lord of the Manor, and built a new mansion house near the upper end of the village, which was called "Over Hall," that is, the Upper Hall, and to which he removed. His son, John Tatham, and Barbara his wife, had issue, William and Robert, whose male heir is extinct.*

43. This evidence is of reputation or family tradition is admissible at common law, as preserved by section 7(3)(b)(i) of the Civil Evidence Act 1995, as evidence of pedigree.

44. Whilst it was Robert Tatham[16] who built Over Hall, it was his younger brother, William Tatham[17], and not Robert who was married to Frances. William was the father of John Tatham[18] who married Barbara.

45. Mr Burton's and Ms Bamford's case is that ownership of the lordship passed with Over Hall to the Marton family in 1737 and then passed through Mr Fawcett, Mrs Bracken and Mr and Mrs Brown to themselves.

46. As the table at paragraph 25 above shows, there were express dispositions of the lordship in the 1892 settlement, the 1947 conveyance, the 1953 assent, the 1995 conveyance and the 2004 conveyance.

47. There is some common ground about the ownership of the lordship in the early middle ages. But the villagers' principal case is that by 1605 it had ceased to exist.[19] Mr Stafford places weight on a work entitled "History of the Township of Ireby" by Colonel Chippindall ("Chippindall"). This was published in 1935 as volume 95 of the Chetham Society's series of histories of Lancaster and Chester.

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[16] Died 1638.
[17] Born 1624. Great-great-grandfather of the Rear Admiral. Died 1703.
[18] Born 1665. Died 1700.
[19] This is the break up case referred to in paragraph 50 below.

48. Chippindall says there is no mention of the lordship from the 17th century until it is referred to in the 1836 stinting agreement.[20] He says that the claim by the Marton family to the lordship to be found in the 1836 stinting agreement "seems to have been assumed."[21]

The application to close the lordship title

49. By an application dated 9 May 2007 ("the original application") the villagers applied to Land Registry to alter the register by closing both the lordship title and the fell title. The villagers made the original application under paragraph 5(a) of schedule 4 of the Land Registration Act 2002, which enables the registrar to alter the register for the purpose of correcting a mistake.

50. In respect of the application to close the lordship title, a number of alternative mistakes are put forward. First, the villagers say that the lordship had ceased to exist or had become vested in the Crown by 1605. I shall refer to this as "the break up case".

51. Secondly, the villagers say that if, contrary to the break up case, the lordship still exists, it is now vested in them. This is because it was validly transferred to them on 4 December 2008 by the Grand Prior of the Grand Priory of England of the Sovereign Military Hospitaller Order of St John of Jerusalem of Rhodes and Malta ("the knights"). I shall refer to this as "the knights' case".

52. The knights were established as an order in about 1100. It is an international organisation recognised as a sovereign subject of international law by over 100 states, but not by the United Kingdom. The knights' case is based on the premise that, until the transfer, title to the lordship had remained vested in the knights since the reign of Philip and Mary.

53. Thirdly, the villagers say in the alternative that if, contrary to the break up

[20] p.14.
[21] p.70.

case, the lordship still exists, it is now vested in them because it was validly transferred to them on 18 August 2008 by Ms Scott. I shall refer to this as "the Netherbeck case". This case is based on the premise that, until the transfer, title to the lordship was vested in the owner of Netherbeck.

54. Fourthly, if the lordship has been validly transferred to Mr Burton and Ms Bamford, it was not transferred to them until 21 September 2004 by Mr and Mrs Brown, their predecessors as owners of Over Hall. This was after 13 October 2003, the day on which the Land Registration Act 2002 came into force. On that day it ceased to be possible to register a lordship title. I shall refer to this as "the too late case".

55. Mr Burton's and Ms Bamford's solicitors objected to the original application on 4 July 2007, and the dispute was referred to the adjudicator under section 73(7) of the Land Registration Act 2002 on 30 August 2007.

56. Although Mr Burton and Ms Bamford were ordered to be the applicants, it has subsequently been held in Baxter v Mannion [2010] EWHC 573 (Ch), [52] that the burden of proof is on the party seeking to alter the register. Therefore the villagers bear the burden of proof of showing that the lordship has not been validly transferred to Mr Burton and Ms Bamford.

57. Whether or not the villagers succeed on this issue will depend on the view I form of the historical evidence put before me. This is not an easy task. I have been invited to consider with care the history of the lordship between 1279 and 1947. I have given only a brief outline above. Most of the fourteen volumes of the trial bundles and most of the ten days of the oral hearing were concentrated on this research.

58. The parties invite me to reach radically different findings on the historical evidence. There is much in contention. It is not my task to write a balanced historical treatise susceptible to peer review. As Lewison J said in Crown Estate Commissioners v Roberts [2008] 2 EGLR 165, [2]: "I should, however,

make it clear, that although this judgment contains a good deal of historical material, I am not resolving controversies between historians and scholars but deciding the issues in this case on the basis of the evidence before the court".

59. I am not allowed the historian's luxury of keeping an open mind. I have to find, on the balance of probabilities on the evidence presented to me, whether certain things in the past, some of which took place in the dim and distant past, did or did not happen. As Baroness Hale of Richmond said in Re B [2009] AC 11, [32]: "In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other". Lord Hoffmann said in the same case at [2]: "The law operates a binary system in which the only values are zero and one. The fact either happened or it did not".

The lordship title and a proprietor in possession

60. Paragraph 1 of schedule 4 of the Land Registration Act 2002 provides that an alteration of the register which involves the correction of a mistake and prejudicially affects the title of the registered proprietor (my emphasis) amounts to rectification. This is therefore a rectification case.

61. Paragraph 6(2) of schedule 4 of the Land Registration Act 2002 provides that in cases of rectification, no alteration affecting the title of the proprietor of a registered estate in land may be made without the proprietor's consent in relation to land in his possession unless:

(a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or

(b) it would for any other reason be unjust for the alteration not to be made.

62. In my judgment the protection afforded by paragraph 6(2) does not apply to a registered proprietor of a manor or lordship, and therefore has no relevance to the application to close the lordship title. A manor or lordship is outside the definition of "land" in section 132 of the Land Registration Act 2002. This definition is different to that to be found in section 205(ix) of the Law of Property Act 1925 which expressly included a manor or lordship, or to that to be found in section 3(viii) of the Land Registration Act 1925 which also expressly included a manor. Manors were deliberately removed from the definition (see paragraph 3.20 of Law Commission Report No 254).

63. Moreover, s.131(1) of the Land Registration Act 2002 provides that, for the purposes of the Act, land is in the possession of the proprietor of a registered estate in land if it is physically in his possession. The lordship has no physical existence, so I find it difficult to see how the lordship can be in the physical possession of Mr Burton and Ms Bamford.

64. Paragraph 6(3) of schedule 4 of the Land Registration Act 2002 provides that in cases of rectification, if on an application for alteration the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the order.

65. Accordingly, unless there are such exceptional circumstances, the title should be closed if the lordship had never been validly transferred to Mr Burton and Ms Bamford prior to 13 October 2003, when it ceased to be possible to be registered as the proprietor of a manor or lordship.

Adverse possession, prescription and estoppel in relation to the lordship

66. It is convenient at this stage to deal shortly with three specific arguments developed by Mr Littman in relation to the application to close the lordship title. It is said that Mr Burton and Ms Bamford have acquired title to the lordship by adverse possession, alternatively by prescription, alternatively by

proprietary estoppel.[22]

67. In my judgment there is no merit in these submissions. Incorporeal hereditaments are not capable of being adversely possessed. As Stephen Jourdan QC's Adverse Possession puts it[23]:

*Claims to incorporeal hereditaments ... are governed by the law of prescription ... which operate[s] on different principles to the law of adverse possession.*

68. The claim for prescription is based on lost modern grant. This is a fictional lawful grant. As will be explained below, it has not been possible for a new grant of a lordship lawfully to be made after 1290. This is because the Statute of *Quia Emptores* 1290 brought to an end sub-infeudation. So it is not open to Mr Burton and Ms Bamford to make a claim based on prescription.

69. Mr Littman correctly points out that the villagers are the successors in title to signatories of the 1836 stinting agreement which acknowledged the Marton family as owners of the lordship. That I accept. But for the reasons advanced by Mr Stafford in his closing submissions, I am unable to find any detriment to Mr Burton and Ms Bamford or to anyone else flowing from the matters set out in paragraph 14 of Mr Burton's and Ms Bamford's re-amended statement of case, nor would it be inequitable to permit the villagers to advance as part of their alternative cases that they are the proprietors of the lordship.

The application to close the fell title

70. The original application also includes an application by the villagers to close the fell title. The application to close the fell title is again made under paragraph 5(a) of schedule 4 of the Land Registration Act 2002, which enables

[22] No similar arguments are advanced in respect of the application to close the fell title. My invitation to Mr Littman to advance a case of adverse possession of the fell was declined.
[23] Paragraph 1-13.

the registrar to alter the register for the purpose of correcting a mistake.

71. The last express disposition of the fell was in the 1892 settlement. There has been no express disposition of the fell to Mr Burton and Ms Bamford. They can rely on section 62(3) of the Law of Property Act 1925, which provides:

> *A conveyance of a manor*[24] *shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quitrents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or, at the time of conveyance, demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.*

72. If it is established that Mr Burton and Ms Bamford were not entitled to be registered as the proprietors of the lordship, it follows that their registration as proprietors of the fell was a mistake. They have no claim, independent of the lordship, to the title of the fell.

73. The villagers do not claim to have title to the fell. So if the present title is closed it will revert to being unregistered land owned by no one.

<u>The fell title and a proprietor in possession</u>

74. In my judgment the protection afforded by paragraph 6(2) of schedule 4 of the

[24] By section 205(ix) of the Law of Property Act 1925 a "manor" includes a lordship, and reputed manor or lordship.

Land Registration Act 2002[25] does apply to a registered proprietor of the fell and is therefore of relevance to this aspect of the original application. It will not necessarily follow that if Mr Burton and Ms Bamford were to lose the title to the lordship they would automatically lose the title to the fell.

The witnesses

75. Mr Burton gave oral evidence. He did not call Ms Bamford or any other witnesses of fact. Mr Walker and Ms Scott gave oral evidence. The villagers did not call any other witnesses of fact. Some of the oral evidence concerned events leading up to the registration of title to the lordship and the fell. Some of it amounted to a commentary on various historical documents and the copious research undertaken by the parties themselves.

76. Both sides have used the services of scholars to translate those documents which were not already translated from the original Latin or law French. A helpful experts' report on the history and status of the knights by Dr Jonathan Riley-Smith[26], was admitted in writing on behalf of the villagers. It was not challenged.

My assessment of the witnesses and the human dimension to the dispute

77. This dispute arose because of a serious conflict which has developed between Mr Burton, on the one hand, and the villagers, on the other. Mr Burton believes he has a good title to the lordship, and that he has reasonable grounds for so believing. The villagers beg to differ.

78. The lord of the manor owns the manorial waste of the manor. Mr Burton is an ordered and efficient man and he has set about mapping the manorial waste. He has asked certain of those living in the village to tidy up or to cease obstructing land outside their homes considered by him to be manorial waste.

[25] This protection is set out in paragraph 61 above.
[26] Dixie Professor Emeritus of Ecclesiastical History in the University of Cambridge.

This has not gone down well.

79. This is not part of the dispute before me and I do not propose to comment on the legal or other merits of it. But what is apparent is that a considerable degree of mistrust has arisen between the parties. Having decided to undertake their own research, the villagers are convinced that Mr Burton and Ms Bamford have, at best, a phony title resurrected by a nineteenth century usurper.

80. I have had a good opportunity to observe and assess all three of the witness during the 10 day hearing. I have formed a high opinion of all three witnesses. Each is an individual of determination and energy. But where I have not been able to accept a witness's evidence on a material matter I will endeavour to say so.

81. I have already mentioned Mr Burton's business career. Over Hall was bought in a dilapidated state. It has been restored carefully and sympathetically. The fell has been taken under control and its use regulated. An attempt has been made, in Mr Burton's eyes, to tidy up the village.

82. Mr Walker has had a distinguished career as a civil engineer specialising in nuclear power. Ms Scott ran a well known and popular gift shop in the Lake District. They have convinced themselves that Mr Burton poses a threat to the well being of the village. Some of their concerns and some of their historical interpretation are, I find, unjustified objectively. For example, there is a suggestion in the original application that those with rights of common signed the 1836 stinting agreement as a result of intimidation. There is no evidence of this whatsoever, and was properly not relied upon by Mr Stafford.

The cautions against first registration

83. The title to Over Hall was already registered at the time of its sale to Mr Burton and Ms Bamford in 2000. But the title of much other land in and

around Ireby, including the fell, was still unregistered at that time.

84. In 1999 three cautions against first registration were lodged under section 53 of the Land Registration Act 1925 in respect of land in and around Ireby ("the cautions").

85. According to the cautions, by a conveyance dated 25 October 1999 Mr Denis Donachie conveyed, or purported to convey, the lordship to Mr David Lee Donachie, who styled himself "Lord of the Manor Ireby". On 31 October 1999 Mr David Lee Donachie granted or purported to grant a lease of the fell to Mr Roberts.

86. On 29 December 1999 Mr Roberts lodged the first of the cautions. It was a caution against first registration of the land within his lease being described as "land lying to the north of Masongill Fell Lane Ireby."

87. On the same day Mr David Lee Donachie lodged the second of the cautions. It was a caution against first registration of "the Manor or reputed Manor or Lordship shown tinted pink on the filed plan of the above title number filed at the Registry being part of the Manor of Ireby, Carnforth, Lancashire."

88. On 18 April 2000 Mr David Lee Donachie lodged the third of the cautions. It was a similar caution to the second but in respect of other land identified therein by reference to a filed plan.

89. I have not been provided with copies of the plans but the land affected by the cautions was extensive and extended into the village itself. There is no evidence that Mr Burton and Ms Bamford were aware of the cautions at the time of their purchase of Over Hall. I accept Mr Burton's oral evidence that he was not aware of them until four months after buying Over Hall.

Mr Burton's and Ms Bamford's purchase and registration as proprietors of Over Hall

90. Prior to Mr Burton's and Ms Bamford's purchase of Over Hall Mr Burton had seen the 1995 conveyance. As well as expressly conveying the 77.1 acres of Over Hall, the 1995 conveyance also expressly conveyed the lordship and the 43 sheep gaits to Mr and Mrs Brown.

91. It was never intended by the parties to the 2000 transfer that the 43 sheep gaits would be included in the sale. Mr Burton and Ms Bamford did not wish to acquire the sheep gaits and Mr and Mrs Brown wished to sell them to a third party.

92. Mr Burton's evidence is that he believed in 2000 that the lordship not only belonged to Over Hall but formed part of the sale. This is the one part of his evidence I am unable to accept. In his first witness statement Mr Burton particularly relies on the fact that "the manor was not an item expressly excluded from what the Browns agreed to sell us whilst the sheepgates were."

93. In fact neither the sheep gaits nor the lordship are mentioned in the 2000 transfer. Mr Burton and Ms Bamford failed to disclose the contract or the enquiries before contract. In a case where documents have been tracked down from numerous sources, including the public records at Kew, the Lancashire Records Office and private family archives, this is a striking omission. Moreover even the TP1 was not disclosed and put into the trial bundles until the hearing began.

94. Mr Burton was not convincing on this point in cross examination. He could not field the question about pre contract enquiries. An experienced banker reading the documents would have seen that there was no reference in the 2000 transfer to the lordship, in marked contrast to the 1995 conveyance.

95. There is not a word about the lordship in Richard Turner & Son's 2000 sales particulars of Over Hall. In June 2004 Mr and Mrs Brown denied ever having sold the lordship to Mr Burton and Ms Bamford in 2000. A fair reading of a letter Mr Burton wrote in November 2004 suggests he did not consider himself

owner of the lordship in 2001.[27]

96. It is more likely than not that the lordship was not even in the minds of Mr Burton and Ms Bamford when they purchased Over Hall. Mr Burton is a practical man and he would have had his work cut out planning and organising the substantial renovation required at Over Hall. I can see no reason why at that time he would have been concerned with the mediaeval relic of a lordship. It was not suggested that he is a person with a penchant for collecting them.

97. At the time of the 2000 transfer a number of historical pre-registration deeds were handed over by Mr and Mrs Brown to Mr Burton and Ms Bamford. By a letter dated 13 December 2000 Mr and Mrs Brown's solicitors requested the return of these documents, to enable Mr and Mrs Brown to demonstrate their title to the retained sheep gaits.

98. Mr Burton and Ms Bamford duly complied with this request. These documents were not returned to Mr Burton and Ms Bamford until 2003. This will be of significance.

99. Following the 2000 transfer, Mr Burton and Ms Bamford were registered as the proprietors of Over Hall on 28 September 2000. The property within the title did not include the fell, which remained unregistered land. Title to the lordship remained unregistered.

100. On 20 January 2001 an informal meeting was called in the village, which was chaired by Ms Scott. It was attended by Mr Burton and Mr Walker, amongst others. The meeting was called because the cautions had prevented the owner of a property in the village from remortgaging, and there was growing concern locally about the impact of the cautions. There was a feeling that the cautions could only be challenged by someone who could show a better title to the lordship than Mr David Lee Donachie.

[27] The context in which this letter was written is dealt with in paragraph 124 below.

101. I accept Mr Walker's evidence that Mr Burton made no suggestion at the meeting that he owned the lordship. This confirms my view that at this stage this was not something which was weighing on Mr Burton's mind.

102. During the period between 2001 and 2003 residents of the village remained concerned about the cautions, and enquiries were made of the county council and the Manorial Society of Great Britain. The local MP became involved and she corresponded with the then chief land registrar.

Mr Burton's and Ms Bamford's purchase and registration as proprietors of the lordship

103. In early August 2003 Mr Burton received back from his solicitor, out of the blue, the bundle of historical pre-registration deeds relating to Over Hall which had been returned to Mr and Mrs Brown's solicitors soon after the purchase of Over Hall. Mr Burton was told to hold them for safe-keeping.

104. Mr Burton did not just file these documents away. He read through them with ever increasing interest. In particular, Mr Burton was struck by the 1947 conveyance to Mr Fawcett and the 1953 assent to Mrs Bracken. The 1947 conveyance was of both Over Hall and the lordship and recited the 1892 settlement in the chain of title.

105. Mr Burton says in his witness statement that these documents convinced him that he could show a better title to the lordship than Mr David Lee Donachie. The villagers were hoping that someone could do this. I accept that evidence. If Mr Burton and Ms Bamford became registered as the owners of the lordship, Mr David Lee Donachie's claim would be stifled.

106. Mr Burton explained in cross-examination that when he discovered the lordship had been conveyed together with Over Hall through successive conveyances he wanted to find a solicitor competent enough to register him and Ms Bamford as owners of the lordship. He was recommended to Henmans in Oxford as specialists in manorial law.

107. Within two months of receiving back the documents, Mr Burton made a statutory declaration on 6 October 2003 ("the 2003 statutory declaration") which included the following passage:

*I sincerely believe that when my said partner and I purchased the Property from the Sellers on 1st September 2000 that all legal title to the Manorial Title was transferred to myself and my partner.*

108. The 2003 statutory declaration was prepared by Henmans. Although I am unable to accept that Mr Burton held that belief as far back as 2000, I do find that he held that belief at the time he made the 2003 statutory declaration. I am satisfied that by October 2003 Mr Burton and Ms Bamford honestly believed that they had a good title to the lordship.

109. On Wednesday 8 October 2003 Henmans sent an application to Land Registry in form FR1, dated Monday 6 October 2003, for first registration of the lordship ("the 2003 application"). This was received by Land Registry on Friday 10 October 2003 and treated as having been made on that date.[28]

110. Land Registry did not serve notice of the 2003 application on anyone living in the village despite the previous correspondence between the chief land registrar and the local MP acting on behalf of those living in the village.

111. Notice was, however, served on the solicitors for the cautioner, Mr David Lee Donachie. They appear not to have had any stomach for a fight, and wrote to Mr Burton and Ms Bamford on 21 October 2003 indicating that the issue should be resolved relatively quickly.

112. On 23 October 2003 Land Registry wrote to Henmans explaining that Mr David Lee Donachie's solicitors were likely to accept that Mr Burton and Ms

[28] In accordance with rule 24 of the Land Registration Rules 1925. A similar procedure is now to be found in rule 15 of the Land Registration Rules 2003.

Bamford had deduced a better title to the lordship than Mr David Lee Donachie and that they would remove the cautions. This duly happened.

113. In the same letter Land Registry said it was not clear from the 2000 transfer whether it was the intention to transfer the title to the manor with the title to Over Hall, so it would be necessary to serve notice of the 2003 application on Mr and Mrs Brown. Shortly thereafter, Land Registry suggested that if Mr and Mrs Brown's consent to the 2003 application was forthcoming there would be no need to serve notice on them.

114. By now relations between Mr Burton and Ms Bamford, on the one hand, and Mr and Mrs Brown, on the other, had become strained because of a contractual dispute arising out of the 2000 transfer. This dispute has nothing to do with this reference. Consent to the 2003 application was not therefore forthcoming from Mr and Mrs Brown.

115. By early June 2004 Land Registry was becoming concerned that the consent was not forthcoming. It would normally have cancelled the 2003 application. But it did not do so as Mr Burton and Ms Bamford could not have made a fresh application. An application to register title to a lordship cannot be made after Friday 10 October 2003.

116. On 8 June 2004 Land Registry served notice of the 2003 application on Mr and Mrs Brown. On 17 June 2004 Mr and Mrs Brown's solicitors wrote to Land Registry objecting, stating that Mr Burton and Ms Bamford did not have title to the lordship which was not included in the sale of Over Hall.

117. However, as part of a settlement of the contractual claim against them, Mr and Mrs Brown agreed to sell the lordship to Mr Burton and Ms Bamford for a nominal £1. I accept that this was a compromise made in good faith and included Mr Burton and Ms Bamford giving up a claim in misrepresentation against Mr and Mrs Brown.

118. The 2004 conveyance, which is dated 21 September 2004, enabled Mr Burton and Ms Bamford to acquire title to the lordship and included the following provisions:

> 1. *IN consideration of the sum of ONE POUND (£1.00) (receipt of which the Browns hereby acknowledge) the Browns with full title guarantee HEREBY CONVEY to [Mr Burton and Ms Bamford] the Manor or reputed Manor of Ireby in the County of Lancashire ("the Manor") TO HOLD the same unto [Mr Burton and Ms Bamford] in fee simple.*
>
> 2. *[Mr Burton and Ms Bamford have] applied to the District Land Registry for Lancashire for registration of the title of The Lord of the Manor of Ireby. The Browns shall immediately hereafter apply to the District Land Registry for Lancashire to withdraw their objection and agree not to raise any further objections to [Mr Burton's and Ms Bamford's] said application.*

119. It is to be noted that the 2004 conveyance was with full title guarantee.

120. As a result of Mr and Mrs Brown withdrawing their objection to the 2003 application, it was duly completed by Land Registry on 28 October 2004, and Mr Burton and Ms Bamford became the first registered proprietors of the lordship under title number LA945262. As the then chief land registrar subsequently pointed out in correspondence, the title to the lordship was registered as a result of the 2004 conveyance. This conveyance made the 2003 statutory declaration superfluous.

121. The transitional provisions governing the commencement of the Land Registration Act 2002 provided that the 2003 application continued to be governed by the Land Registration Rules 1925, as it was made prior to 13 October 2003. Rule 85(2) of the Land Registration Rules 1925 provided that every application should be completed by registration as of the date and time

at which it was deemed to have been delivered.[29]

122. As the 2003 application had been delivered on 10 October 2003, the date of the registration was backdated to 10 October 2003. Whether or not Mr Burton and Ms Bamford had a good paper title to the lordship, they were deemed from 10 October 2003 to have title vested in them by virtue of section 69(1) of the Land Registration Act 1925.[30]

Mr Burton's and Ms Bamford's purchase and registration as proprietors of the fell

123. It is not clear to me when Mr Burton first became aware of the 1836 stinting agreement which clearly proclaims the fell as the property of the lord of the manor. It was not included within the list of documents accompanying the 2003 application. But Mr Burton must have been aware of it by 24 December 2004. On that day a caution against first registration of the fell was lodged by Mr Burton and Ms Bamford. The certificate accompanying the application stated:

*The Cautioner has been registered as Lord of the Manor under Title Number LA945262 and due to information contained in [the 1836 stinting agreement] believes that they have title to this land.*

124. On 24 November 2004 Mr Burton wrote a letter to the chairman of the parish council, explaining his receipt of the bundle of historical pre-registration deeds relating to Over Hall in August 2003 and informing him of the 2004 conveyance whereby title to the lordship was conveyed to Ms Bamford and himself. He finished the letter as follows:

*Parishioners will no doubt be relieved to know that my solicitors have challenged Donachie and he has now withdrawn all his cautions ... Please feel free to draw this letter to the attention of Parishioners.*

[29] A similar provision is now to be found in rule 20 of the Land Registration Rules 2003.
[30] A manor was within the definition of "land" in the Land Registration Act 1925.

125. It is common ground that this letter did indeed come to the attention of the villagers at this time. They make the point that the letter did not disclose that Mr Burton and Ms Bamford had registered their title to the lordship, but it clearly contains an assertion of ownership.

126. In January 2005 Mr Burton, as owner of the lordship, began complaining to Ms Scott and Ms Chamberlin about their vehicle parked outside Netherbeck, which Mr Burton considered to be trespassing on manorial waste. This was followed up a month later with the threat of an injunction.

127. Having secured registration of the lordship, Mr Burton turned his attention to registration of the fell. On 3 February 2005 Mr Burton made a statutory declaration ("the 2005 statutory declaration") in which he said:

*Ireby Fell is the unregistered land that adjoins [Over Hall] ... To the best of my knowledge Ireby Fell has always been in the ownership of the Lord of the Manor of Ireby and evidence of this is detailed in the [the 1836 stinting agreement] ... it clearly states "the Freehold and Inheritance of and in the soil of the said Common or Fell is vested of right in the Lord of the Manor of Ireby".*

128. Mr Burton was not cross-examined on this. I am satisfied that Mr Burton made the 2005 statutory declaration in good faith believing himself to be the owner of the fell by virtue of being owner of the lordship.

129. Mr Burton and Ms Bamford applied to Land Registry on 21 February 2005 in form FR1 for first registration of the fell ("the 2005 application"). Land Registry served notice of the 2005 application on Mr and Mrs Brown, who no longer living in Ireby sensibly suggested it might better be served on local people, including Ms Scott.

130. The 2005 application duly came to the notice of the villagers. In the course of

her dispute with Mr Burton about her vehicle Ms Scott wrote to Mr Burton on 11 April 2005. At this stage she was unable to do more than put Mr Burton to proof that he owned the lordship. On 12 April 2005 Mr and Mrs Walker wrote to the parish council chairman expressing the view that the fell was common land, and that it should not become part of the property of Over Hall. They hoped the fell would continue to be supervised and controlled by the parish council for the benefit of all the people of Ireby.

131. An extraordinary parish council meeting was held on 19 April 2005. Mr Burton and Ms Scott were both present as parish councillors. An objection to the 2005 application had to be served by 21 April 2005. Land Registry had refused an extension of time. The Lancashire Association of Parish and Town Councils was not prepared to help the parish council by providing legal advice. But a number of local residents had, like Mr and Mrs Walker, written to the parish council expressing opposition to the 2005 application.

132. Ms Scott believed she had been given permission by the chairman to contact a firm of solicitors to enquire about the parish council objecting to the 2005 application. An argument broke out about this with which I am not concerned. The parish council decided it did not have any objection to the 2005 application. Accordingly, a letter was written to that effect to Land Registry.

133. None of the villagers made an objection to the 2005 application although I am satisfied that at least Ms Scott and Mr and Mrs Walker were well aware of it and had an opportunity to do so. By May 2005 Land Registry had completed the 2005 application which was backdated in the usual way to the date it was received.

Land Registry's subsequent doubts as to Mr Burton's and Ms Bamford's title to the fell

134. A dispute arose between Mr Burton and Mr Walker as to the boundary between Bridge House and the manorial waste. Mr Walker was sufficiently

dissatisfied with Mr Burton's and Ms Bamford's registration as proprietors of the lordship and of the fell to ask his member of parliament to take up the matter with Land Registry. The then chief land registrar replied to her on 8 September 2005. In reference to the registration of the fell, he said:

*I understand there is clear and substantial evidence linking the fell with the manorial title and, to this extent, the registration, which was only completed earlier this year, was straightforward.*

135. Mr Burton and Ms Bamford subsequently applied to Land Registry to register some further land not being part of the fell on the basis that it was also manorial waste. As at the hearing, I shall refer to this land as "the bonfire land". I am not concerned with the application to register the bonfire land. But Mr Stafford has invited me to find that Mr Burton and Ms Bamford were wrongly registered as the proprietors of the fell for the reasons given by the then Lancashire district land registrar, Ms Wallwork, in a letter to Henmans dated 6 April 2006. Ms Wallwork took a somewhat less sanguine view of the correctness of the registration of the fell than her chief executive had done.

136. Ms Wallwork noted that the earliest document of title disclosed on first registration of the fell was the 1892 settlement. But no title was deduced from George Henry Marton, who died in 1942, to his brother Richard Oliver Marton, the next document disclosed being the 1947 conveyance which included the lordship but did not expressly include the fell.

137. Ms Wallwork took the view that whilst there was every likelihood that the fell vested in Richard Oliver Marton under the terms of the 1892 settlement, no evidence had been produced that the fell was conveyed to Mr Fawcett by the 1947 conveyance.

138. Similarly, the 1953 conveyance expressly conveyed Over Hall and the lordship, but did not mention the fell. The 1995 conveyance expressly conveyed Over Hall, the lordship and the 43 sheep gaits, but did not mention

the fell. Ms Wallwork's concerns are shown by looking at the table at paragraph 25.

139. Ms Wallwork concluded that Mr Burton and Ms Bamford could only deduce title to the fell back to 1947 and she regarded the registration of Mr Burton and Ms Bamford as proprietors of the fell as being in error. She accepted that the 1836 stinting agreement showed Oliver Marton had a good title to the fell, but there was no deduction of title to the fell from the Marton family in any of the subsequent deeds. She felt it supportive of her view that in 1978 no one was aware of the ownership of the fell despite Over Hall being the adjoining property.

140. Ms Wallwork declined to register Mr Burton and Ms Bamford as proprietors of the bonfire land on the grounds that it had not been expressly included within the 1947 conveyance.

141. Unsurprisingly, Mr Stafford drew my attention to this letter and to a subsequent letter written by Ms Wallwork on 5 October 2006. Ms Wallwork's argument is that there is no evidence that title to the fell has ever passed to Mr Burton and Ms Bamford from the Marton family. She raised a concern that there may have been a disposition of the fell between 1892 and 1947.

142. Mr Stafford also drew my attention to the minutes of a meeting between Ms Wallwork and Mr Burton on 1 November 2006. The minutes were taken by Mr Cudworth of Land Registry. He inaccurately entitled the meeting as one to discuss the first registration of the fell and the lordship, whereas it related to the bonfire land. There was a discussion between Ms Wallwork and Mr Burton as to the effect of section 62(3) of the Law of Property Act 1925. I do not find these minutes of any assistance to me in the task I have.

143. It is not my function to review decisions or the views of Land Registry. But Mr Stafford adopts Ms Wallwork's approach as part of his submissions. In my judgment, if Ms Wallwork had attached proper weight to section 62(3) of

the Law of Property Act 1925 she would have concluded that, unless there had been an express disposition of the fell at some time between 1892 and 1947, the fell would have passed with the lordship by virtue of the 1947 conveyance, the 1953 assent, the 1995 transfer and the 2004 conveyance.

144. I am satisfied, on the balance of probabilities, that there was no express disposition of the fell between 1892 and 1947. There is a good chain of title to the lordship from the Marton family in 1947 to Mr Burton and Ms Bamford in 2004. I am therefore of the view that, if the lordship was in fact vested in the Marton family in 1947, the fell was conveyed or transferred to Mr Burton and Ms Bamford.

The original application[31]

145. After the completion in about May 2005 of Mr Burton's and Ms Bamford's registration as first proprietors of the fell, the villagers continued to conduct extensive historical research into the ownership of the lordship and the fell. Two years later they felt confident that they had found sufficient evidence to support their case. On 9 May 2007 they sent to Land Registry a detailed paper prepared by themselves as part of the original application.

146. Mr Burton and Ms Bamford were at this time still represented by Henmans who wrote on 4 July 2007 a detailed letter of objection to the original application.

The reference

147. This led to the dispute being referred to the adjudicator under section 73(7) of the Land Registration Act 2002 on 30 August 2007. The registrar prepared a case summary on that date distilling the issues at that time raised by the

[31] That part of the original application which concerns closure of the lordship title is summarised at paragraphs 49-59 above. That part of the original application which concerns closure of the fell title is summarised at paragraphs 70-73 above.

original application and the objection.

148. The villagers were claiming that the lordship title should be closed for two reasons. First, because the lordship had ceased to exist by 1605 (the break up case). Secondly, because the 2003 application should have been rejected as having been made out of time (the too late case). Mr Burton's and Ms Bamford's response was to place reliance on the 1836 stinting agreement as an ancient document and to assert that the 2003 application was made in good time.

149. The villagers were claiming that the fell title should be closed for three reasons. First, because insufficient title was lodged at first registration and contrary evidence now casted doubt on that title. Secondly, it was suggested that persons with rights of common could not own land over which their rights are exercised. This argument was based on the fact that in the 1836 stinting agreement Oliver Marton was entitled to a substantial number of gaits for his tenants. As I understand it, this argument is no longer pursued. Thirdly, because the fell had been sold off from the lordship even if the latter still existed.

150. Mr Burton's and Ms Bamford's response was to place reliance on the 1836 stinting agreement as proof of the fell being waste land of the manor. There was no evidence that the fell had ever been sold separately from the lordship and the waste would have passed with the lordship without specific mention in a conveyance.

The preliminary point and the new cases

151. On 6 March 2008 Lewison J delivered judgment in Wells v Pilling Parish Council [2008] 2 EGLR 29. In that case Mr Wells made a successful application to Land Registry to be registered as the first proprietor of land with a possessory title by adverse possession. The council applied for rectification or closure of part of the title on the ground that Mr Wells did not

satisfy the factual requirements for such registration. Mr Wells objected to the application and the dispute was referred to the adjudicator.

152. There was a preliminary issue as to whether the council's application should be cancelled by reason of its failure to assert any estate, right or interest enjoyed by it that was adverse to, or in derogation of, Mr Wells' title, or its inability to show that its application had been made in exercise of a statutory power or function.

153. The adjudicator answered that question in the negative on the ground that no restriction on the category of parties that could apply for alteration of the register could be implied into the Land Registration Act 2002.

154. On an appeal by the council, an issue arose as to whether the council's application was a matter of private or public law. It was common ground that if it were a matter of public law, the council had a sufficient interest to make the application, but that if it were not, it lacked the necessary standing required by the common law for private law proceedings, such that the adjudicator ought to strike out its application.

155. Lewison J allowed the appeal as he found that Mr Wells' application to be registered as the proprietor of a parcel of land raised questions of private law only.

156. In the light of this decision Mr Burton and Ms Bamford applied to the adjudicator to strike out the original application. This was on the basis that the villagers had no *locus standi* as they claimed no rights themselves to the fell or to the lordship. They were merely challenging the rights of Mr Burton and Ms Bamford.

157. It was at this stage that the villagers first instructed solicitors. Mr Baxendale of Blakemores, who represents them, is a member of one of the commemorative copy orders of the knights and has an interest in mediaeval

land law.

158. A preliminary issue was ordered. Before it was heard the villagers decided to meet the *locus standi* argument, at least in respect of the lordship, by making two alternative claims themselves to the lordship.

159. First, a claim was put forward that Ms Scott, as co-owner of Netherbeck, owned the lordship (the Netherbeck case). By a conveyance dated 18 August 2008 ("the Netherbeck conveyance") Ms Scott conveyed the lordship to herself and the other villagers. She acknowledged she was not in a position to and did not provide any title guarantee. The Netherbeck conveyance included the rights passing under section 62(3) of the Law of Property Act 1925, except for the waste outside Netherbeck where Ms Scott parked her vehicle.

160. Secondly, a claim was put forward that the knights owned the lordship (the knights' case). By a conveyance dated 4 December 2008 ("the knights' conveyance"), made in similar form to the Netherbeck conveyance, the then Grand Prior of the Grand Priory of England of the knights conveyed the lordship to the villagers and Mr Burton and Ms Bamford. The Grand Prior did not provide any title guarantee. The knights' conveyance included the rights passing under section 62(3) of the Law of Property Act 1925.

161. The preliminary hearing took place before Mr Cousins on 20 January 2009. In a reserved decision dated 13 March 2009 and re-dated 14 May 2009 he held that Wells v Pilling Parish Council was not binding on him, that it was not necessary for an applicant seeking to rectify the register to demonstrate *locus standi* and that the trial of the Netherbeck case, the knights' case and the break up case should proceed to a full hearing.[32]

162. The points taken in the preliminary hearing led to extensive amendments to

[32] These cases are referred to in Mr Cousins' decision respectively as the primary, secondary and tertiary cases. Mr Cousins' decision was not appealed and is to be found on the adjudicator's website.

both sides' statements of case. On 19 November 2009 I ordered consolidated statements of case to be served. By the time of the hearing Mr Burton's and Ms Bamford's re-amended consolidated statement of case extended to 37 pages, the villagers' consolidated statement of case extended to 35 pages supplemented by a further 9 pages, whilst Mr Burton and Ms Bamford responded with a 19 page reply.

Historical survey: introduction

163. A number of primary historical sources have been made available to me. I have also been referred to a number of secondary historical sources. The principal secondary sources relating to the lordship and Over Hall are, in chronological order, The Rev LB Larking's "The Knights' Hospitallers in England" (1857) ("Larking"), H Speight's "The Craven and North West Yorkshire Highlands" (1892) ("Speight"), W Greenwood's "The Redmans of Levens and Greenwood" (1904) ("Greenwood"), The Victoria History of the Counties of England: Lancashire (1914) ("the VCH") and Chippindall (1935).

164. Mr Littman has mounted a sustained attack on Chippindall. Mr Stafford has taken me with considerable care through the history and status of the Chetham society and it is undoubtedly a learned society of substance and distinction. Chippindall himself may not have been a trained or professional historian, but neither was Macaulay. Chippindall acknowledges in the introduction the assistance received from Colonel Parker CB FSA in the matter of the pedigrees of the Redmayne and Marton families.[33]

165. Mr Littman puts his case against Chippindall far too high. The book is admissible and I regard it as a detailed study undertaken in good faith. However, I shall keep an open mind about its conclusions and will have to judge them in the light of the primary sources and both sides' submissions.

[33] Colonel Parker, himself a Fellow of the Royal Historical Society by the time Chippindall was written, was described by Greenwood as beyond comparison the chief living authority on Redmayne history.

The same applies to the VCH. This is a magisterial work and deserves considerable respect, but the entry relating to Ireby is short and at times guarded.

166. In earliest times the manor of Ireby was held in conjunction with the manor of Tatham. By a foot of fine[34] dated 6 October 1279 both manors were conveyed to John de Tatham.

167. In 1290 the Statute of *Quia Emptores* brought sub-infeudation to an end. It altered the law as it related to land held in fee simple in two respects. First, it allowed every free man the liberty to alienate his land without the consent of his lord. Secondly, it enacted that every alienee should hold the land of the same lord of whom the alienor previously held. The effect of this was to prevent the creation of new tenancies. The alienor dropped out, the alienee stepped into his shoes for all purposes, and thus instead of a new sub-tenancy there was the substitution of one tenant for another.[35]

168. The effect of *Quia Emptores* is that no new manor could be created after 1290, except by the Crown which was not bound by the Act.

169. In 1317 the manor of Ireby was separated from the manor of Tatham, the former being sold by a foot of fine dated 12 November 1317 to John de Horneby. The foot of fine was preceded by a charter dated 1316, to be found translated in the Cumbria County Record Office at Carlisle, which has been transcribed by Mr Burton. A thoughtful paper has been prepared by Mr Burton, dated 18 March 2010, which demonstrates a similarity between the boundaries of the manor of Ireby in 1317 and the present parish boundary. This would suggest that the fell formed part of the manor of Ireby in 1317.

<u>The knights</u>

[34] A collusive court action which had become a popular means of conveying freehold property by the middle 13th century. Three copies were made on a single sheet of parchment. The parties each kept a copy and the third copy (at the foot of the sheet) was retained by the court.
[35] See Cheshire and Burn's Modern Law of Real Property 17th edition p.17.

170. There is an issue as to whether the knights ever owned the whole or part of the manor of Ireby, as Mr Stafford supported by Chippindall suggests, or whether they never owned any part of the manor of Ireby, as Mr Littman suggests.

171. The earliest reference to the knights is to be found in Quo Warranto proceedings in 1292. Quo Warranto had its origins in an attempt by Edward I to investigate and recover royal lands, rights, and franchises in England, in particular those lost during the reign of his father, Henry III. From 1278 to 1294, Edward I dispatched justices to inquire "by what warrant" lords held their lands and exercised their jurisdictions (often the right to hold a court and collect its profits). Initially, the justices demanded written proof in the form of charters, but resistance and the unrecorded nature of many grants forced the king to accept those rights peacefully exercised since 1189.

172. In 1292 the prior of the knights was summonsed to answer by what right he held rights and liberties in a number of localities, including Ireby and Tatham. The prior relied upon a charter granted by Henry III in 1254. The Crown argued that the knights had acquired lands after the charter and were exercising privileges beyond those to which they were entitled. The jury referred to instances of landowners granting land to the knights and of re-enfeoffment, but did not specify where this had happened.

173. The VCH[36] uses this source to conclude that lands in Ireby and Tatham were owned by the knights in 1292 and continues:

*From the inquisitions already cited it appears that their estate was the later 'manor' of Ireby, but the Hornby manor of 1317 may have been merged in it.*

174. The inquisitions referred to by the VCH will be referred to below.

175. Chippindall uses this VCH reference as his source for stating[37], "By 1292 [the

[36] p.453[11].

knights] had obtained some land in the manor of Ireby". He further states, "There is reason to believe that [the knights] also obtained a half of the manor of Ireby". Chippindall appears to have arrived at this latter proposition from what is contained in an inquisition *post mortem* taken in 1562.[38]

176. Mr Littman argues that the Quo Warranto proceedings relied upon by the VCH and Chippindall in respect of Ireby, Lancashire were directed to rights and privileges and not to the ownership of land, and that the finding of the jury is not sufficiently clear to justify the finding that the knights owned land in Ireby. There were separate Quo Warranto proceedings relating to land in Ireby held by the knights, but that land was in Ireby, Cumberland.

177. Between 1333 and 1335 John de Horneby wished to endow a church in Tunstall[39] with land in Ireby to pay for divine service to be said daily for his soul and those of his ancestors and heirs. This is known as a chantry. Before the endowment could be made inquisitions *ad quod damnum*[40] were held.

178. These inquisitions determined that John de Horneby owned, apart from the land endowed on the church, the manor of Ireby. Chippindall says[41] that it was probably only half the manor which John de Horneby owned. Presumably Chippindall says this because he considers the knights owned the other half. But there is no suggestion in the inquisitions that John de Horneby owned less than the whole the manor of Ireby, whereas it is stated that he owned only a moiety of the manor of Tunstall.

179. By a foot of fine dated 12 November 1337 the manor of Ireby was settled on Edmund, John de Hornby's son, and Edmund's wife.

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[37] p.4.
[38] This document is referred to in more detail in paragraph 190 below.
[39] The church is St John the Baptist, where the Bronte sisters later prayed and ate. The church's website states "A chapel at the east end of the south aisle is called the Chapel of the Holy Trinity, the name given at its foundation by John of Hornby in 1333. It has a much mutilated stone effigy said to commemorate Sir Thomas de Tunstall (knighted 1426)."
[40] The Crown would wish to be satisfied that it would suffer no damage by the disposal of property, in other words that it did not have a right itself to the property.
[41] p.6.

180. In 1338 an inventory was undertaken by the knights of their land in England. Larkin consists of a study of it, and is an impressive piece of scholarship. It claims "to fix with certainty the exact position of the [knights'] estates in each county at the middle of the fourteenth century". Ireby is not mentioned in the list of manors. I am not satisfied that the knights owned any part of the manor of Ireby at this date.

181. There is then a gap of about a century in our knowledge of the manor of Ireby. Chippindall asserts[42] that in 1445 a plea roll records Edmund Redmayne of Ireby Lathes as owner of Ireby manor.[43]

182. There is no doubt that the Redmaynes were substantial landowners in Ireby for the next 150 years. There is an issue between the parties as to whether the Redmayne family held their land in Ireby as lords of the manor, as Mr Littman suggests, or as feudal freehold tenants of the knights who were the lords of the manor, as Mr Stafford suggests.

183. Following the death of Thomas Redmayne inquisitions *post mortem*[44] were held in 1537.

184. These documents are not easy to follow, but I prefer the transcription in the appendix to Chippindall[45] to those prepared by Mr Sutton. This supports the conclusion in the VCH[46] that when Thomas Redmayne died in 1536 he held a capital messuage in Ireby of the knights by a rent of 2s yearly. Thomas Redmayne's son and heir was William Redmayne.

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[42] p.7.
[43] The source given is Greenwood p.186. But not only does the Latin quotation from the plea roll cited by Greenwood not mention the manor of Ireby, Mr Burton's and Ms Bamford's researcher has found no mention of the manor of Ireby within the relevant membrane of the plea roll itself.
[44] The inquisition was a legal process following the death of a feudal tenant held before the Crown's escheator and a jury. The purpose was to identify land held by the deceased at the time of his death so that the Crown could receive homage and relief before granting seisin to the heir.
[45] pp. 78-79.
[46] p. 253[7].

185. Chippindall states[47] that before 1540 William Redmayne "had sold half of the manor (the knights ... had the other half) to Peter Claughton."

186. But it was recorded in 1534 that £4 was paid to the chantry priest at Tunstall in coin from the land or manor of Martin Redmayne and Peter Claughton. This suggests not that the Redmayne family only owned one half of the manor which they sold to the Claughton family, but that they had become joint owners.

187. In 1539 the Dissolution of the Abbeys Act dissolved monastic orders. In 1540 the Hospital of St John of Jerusalem (Possessions etc) Act 1540 ("the 1540 Act") dissolved the knights and vested its property in the Crown.

188. Peter Claughton died on 8 April 1540 and his inquisition *post mortem* records he held a moiety of the manor of Ireby, and states:

*And that the foresaid tenements in Ireby aforesaid are held of the lord king as formerly of the former Prior of Saint John of Jerusalem in England by knight service.*

189. Following the accession of Mary, in 1554 the Act of Repeal repealed the statutes made against the Catholic Church. The Crown Lands Act 1557 confirmed the validity of letters patent to be made by the Crown and in 1558 letters patent were issued asking for the restoration to the knights of their ancient estate. But following the accession of Elizabeth I, the Religious Houses Act 1558 ("the 1558 Act") re-annexed property to the Crown.

190. Peter Claughton's son was John Claughton. He died on 13 September 1561. His inquisition *post mortem* records he held a moiety of the manor of Ireby. It is also recorded that that the manor was held of the Crown as of the later prior of the knights.

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[47] pp.7-8.

191. In the light of the inquisition records I prefer Mr Stafford's argument that by 1540 the manor of Ireby was held of the knights. But I prefer Mr Littman's argument that that the relevant part of the 1558 Act should be read as and interpreted as having the same effect as the relevant part of the 1540 Act. The knights lost any interest they had in the manor of Ireby. Indeed, there has been no suggestion for over 450 years by the knights that they have any interest in the manor of Ireby.[48]

192. In this regard Mr Littman is supported in the result by Chippindall who states[49]:

*The manor of the [knights] would fall to the Crown at the time of the dissolution of the monasteries and is not heard of again.*

193. Accordingly, the villagers' claim to close the lordship title based on the knights' case fails.

Break up

194. In the second half of the 16th century the lordship was held by the Redmayne and Claughton families. On 3 April 1598 the manor of Ireby and various land were sold by a foot of fine by William Redmayne to Christopher Stockdale for £893 6s 8d. This was proclaimed eight times in public. The sale included 20 messuages, 20 tofts, a mill, 20 gardens, 60 acres of land, 60 acres of meadow, 60 acres of pasture, 60 acres of wood, 2,000 acres of furze and heath and 66s 8d worth of rents. But the sale cannot have included Ireby Lower Hall which was sold separately in 1605.

195. Mr Littman accepts that this is the last express and direct documentary

[48] The villagers' own expert, Dr Riley-Smith, has stated that in the first Parliament of Elizabeth in 1558 the properties and revenues of the religious houses restored under Mary were vested in the crown, although no formal act dissolved the knights. In response to a question Dr Riley-Smith said he was not aware of any of any of the lordships, manors or reputed manors owned by the knights which escaped being vested in the Crown.
[49] p.14.

reference to the manor of Ireby until the times of the Marton family.

196. On 25 March 1605 William Redmayne and others sold Ireby Lower Hall and various land by a foot of fine to Thomas Cooke for £160. The sale included 80 acres of land, 40 acres of meadow, 50 acres of pasture, 6 acres of wood, 600 acres of furze and heath and 500 acres of moor in Ireby.

197. At the same time William Redmayne and his wife sold property and land by a foot of fine to Christopher Stockdale and others for £300. The sale included 8 messuages, 8 cottages, 10 gardens, 10 barns, 50 acres of land, 50 acres of meadow, 50 acres of pasture, 2 acres of wood, 100 acres of furze and heath, 100 acres of moor and common of pasture for all beasts in Ireby and Todgill.

198. Chippindall observes[50], "These sales appear to be the final break-up of the Ireby estate owned by this family of Redmayne."

199. Christopher Stockdale died in 1623. His son, Leonard, had died in 1617. His grandson was Christopher Stockdale. On 17 August 1678 Christopher Stockdale and others sold Ireby Old Hall and various land by a foot of fine to Richard Tatham and others for £100. The sale included 50 acres of meadow, 50 acres of pasture, and of common pasture for all livestock with appurtenances in Ireby.

200. Mr Burton and Ms Bamford originally asserted that Richard Tatham became lord of the manor in 1678, and that he was the predecessor in title of the Tatham family who owned Over Hall prior to its sale to the Marton family. It is now accepted that Richard Tatham was of another Tatham family.

201. Of the 1678 sale Chippindall says[51]:

*Here no mention of a manor is made, and as the lands had been much divided*

[50] p.22.
[51] p.14.

*and sold into freeholds at various times, any manorial dues would be scarcely worth collecting. From this time all mention of a manor ceases until in 1836, when Mr Oliver Marton claims, in [the 1836 stinting agreement]to be lord of this manor.*

202. Chippindall concludes[52] that the reference in the 1836 stinting agreement to Oliver Marton being lord of the manor is to an assumed lordship.

203. The VCH refers to the sale of the manor to Christopher Stockdale in 1598 and observes that no manor appears to have been claimed since that time.[53]

204. The break up case can be explained on the basis that the assets of the manor were sold off in 1605 and that the lordship was extinguished. Alternatively, if something remained after 1605, it was no more than a reputed lordship. This is because there were no longer two free tenants holding of it who could sit in a court baron. The conveyancing requirements for transferring a reputed lordship have not been met. There is no documentary evidence that the lordship was conveyed thereafter. There is no document showing that Over Hall is the manor house to which the lordship is appurtenant. Title to the fell has never conveyed in the manner required prior to 1 January 1882.

205. Two principles of conveyancing are relied upon. First, if a manor is to be passed on a conveyance, it has to be expressly conveyed. General words are not enough. It cannot be conveyed by implication from other language in the conveyance.[54] It is said there is no evidence of the lordship ever having been passed on to the Tatham family who became owners of Over Hall. Mr Littman accepts there is no direct documentary evidence of this.

206. Secondly, a conveyance of a reputed manor prior to 1 January 1882 does not pass the freehold interest of the grantor in the waste of the manor unless there

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[52] p.70.
[53] p.253. Apparently the 1836 stinting agreement had not been seen by the editors.
[54] Rooke v Lord Kensington (1856) 2 K&J 753, 772.

are express words to that effect.[55] Even if the lordship existed in gross after 1605, a conveyance of the lordship would not impliedly convey the fell with it.

207. Mr Burton and Ms Bamford challenge the break up case and say that it is necessary to take into account the history since the mid 17th century, to which I now turn.

The Tathams

208. Over Hall was built by Robert Tatham around 1634. He died in 1638. His heir was his brother, William Tatham, who died in 1703. William Tatham's son, John Tatham, inherited Over Hall. He died in 1700. His son, William Tatham, inherited Over Hall. He was High Sherriff of Lancashire and died in 1728. His son, also William Tatham, member of Middle Temple, sold Over Hall on 4 May 1737 to Oliver Marton. Rear Admiral Sanford Tatham, who wrote the letter of 1830 referred to above[56], was the latter's nephew.

209. On 20 July 1711 William Tatham, the High Sherriff, purchased for £100 the right to receive the £4 a year previously payable to the chantry of the church of Tunstall. On 7 December 1728 he made his will. There is mention of the fee farm or chantry rents, which were not to be separated from Over Hall, but there is no mention of the manor of Ireby.

210. Mr Littman argues that fee farms were held of a feudal lord and the inevitable inference from the will is that he was lord of the manor. Mr Stafford does not agree. He cites authority to show that by this time the term "fee farm" was commonly used to describe a rent charge.

211. According to their re-amended consolidated statement of case Mr Burton and

[55] Doe d Clayton v Williams (1843) 11 M&W 804, 807-808. The position has been different since the coming into force of the Conveyancing Act 1881. For the present law see section 62(3) of the Law of Property Act 1925 set out in paragraph 71 above.
[56] Paragraph 42.

Ms Bamford rely upon an indenture dated 3 May 1737 by which Over Hall was conveyed to Oliver Marton. But at the hearing it became apparent that this document was only a lease. The conveyance itself is dated 4 May 1737 and does not make any express reference to the lordship of Ireby.

The Martons

212. The purchaser of Over Hall, Oliver Marton, was a member of Gray's Inn. He died in 1744. His heir was his son, Edward Marton, a bencher of Gray's Inn, who died in 1758. His brother, the Rev Oliver Marton, inherited Over Hall. He died in 1794. His son, Oliver Marton, owned Over Hall between 1794 and his death in 1843. He was a lunatic. It was during his ownership that the 1836 stinting agreement was entered into.

213. Over Hall was owned successively, after the death of Oliver Marton in 1843, by George Marton (died 1867), George Blucher Marton (died 1905), George Henry Marton (died 1942) and Richard Oliver Marton (died 1945).

214. Mr Littman has drawn attention to a copy of a lost indenture made on 7 October 1742 between Oliver Marton and Leonard Tatham. He submits that a reference in that indenture to enclosure is evidence of an assertion to ownership of the lordship. If that is correct, it would appear to be the earliest recorded assertion since the Tatham family built Over Hall.

215. In an indenture dated 1 October 1804, made between the executors of the Rev Oliver Marton and George Marton, his younger son, reference is made to the lordship of Ireby. This appears to be the first written reference since 1598.

216. From 1806 there are a series of written appointments of gamekeepers by the Martons as lords of the manors of Ireby. In the mid 19th century Marton family marriage settlements refer to ownership of the manor of Ireby.

Discussion

217. Having considered the historical evidence, I have reached the view, on the balance of probabilities, that title to the lordship was not ever acquired by the Tatham or Marton families but was assumed by the Marton family during the late part of the 18th or early part of the 19th century.

218. I have considered Mr Littman's very detailed submissions. I take into account both the presumption of continuity[57] and that it is not necessary in order to prove the existence of a manor to produce the court rolls or any documentary proof of the holding of courts and that reputation alone is admissible.[58]

219. However, I am not persuaded that the Tatham family when they built Over Hall were moving the manor house of a lordship they owned onto the waste land of the manor. This is purely speculative. There is absolutely no contemporaneous documentary evidence that the Tatham family had title to or claimed that they owned the lordship.

220. I take into account Rear Admiral Sandford Tatham's letter to his niece. But I do not find it particularly persuasive given that it muddles up Robert Tatham's marriage with that of William Tatham. I also note and take into account his "Jane Austen" point that everyone in a small rural community in times past would have been interested in other people's business making it less likely that a title could be assumed.

221. Set against this is the absence of any direct documentary evidence that the Tatham family owned the lordship and the absence of any reference to the lordship of Ireby in the 1737 sale of Over Hall to the Marton family. That document cannot have passed title either to the lordship or to the fell.

222. It seems highly unlikely that William Tatham, a barrister, would not have included a reference to the lordship in the 1737 conveyance if he believed he

[57] Phipson on Evidence 16th edition paragraphs 7-20 and following.
[58] 12(1) Halsbury's Laws 4th edition re-issue 698.

owned it. It seems highly unlikely that Oliver Marton, a barrister, would not have wanted a reference to the lordship in the 1737 conveyance if he believed he was buying it.

223. Mr Littman turned to the decision of Lord Hardwicke in Norris v Le Leve (1744) 3 Atk 82 to support an argument that general words in 1737 would have passed title to a manor, but Mr Stafford's research indicates that it would only be safe to regard that case as authority for the proposition that general words will suffice when land is being settled not conveyed in the modern sense. There is no suggestion in the arguments or judgment in Rooke v Lord Kensington (1856) 2 K&J 753 that the law changed between 1737 and 1856.

224. The suggestion that the Marton family acquired the lordship by virtue of a lost document is speculative and is not one I can accede to on the balance of probabilities.

225. I also bear in mind that there are no records of manorial courts being held. Whilst such records are not necessary as I have explained, I am entitled to take their absence into account. There is no oral evidence that I find reliable or of assistance relating to the holding of a court baron at Over Hall. The hall is referred to as "the Justices' Hall" but given that there are no manorial court records it could have been used for Petty Sessions if in fact it was used as a court at all.

226. I do not find the evidence of the appointment of gamekeepers of sufficient weight to alter my view. If the Marton family had assumed the lordship then any reference in the gamekeepers' records to the family being lords of the manor is consistent with that assumption. There is no record of gamekeepers being appointed in Ireby before 1806, yet lords of the manor were given power to appoint gamekeepers by section 4 of the Game Act 1706. Nor was the appointment of gamekeepers the exclusive preserve of lords of the manor (see section 5 of the Game Act 1831).

The Netherbeck case

227. For the sake of completeness I must consider briefly the Netherbeck case. This case is based on the argument that Ms Scott's house, Netherbeck, stands on the same ground as the original manor house, known as Ireby Laithes, held of the Crown by the knights before 1290, with the consequence that the owner of Netherbeck, as the corporeal manor, is the owner of the incorporeal hereditament of the lordship.

228. I am not satisfied that the knights owned any part of the manor of Ireby in 1290. I also accept the arguments raised by Mr Littman in Mr Burton's and Ms Bamford's statement of case and in his skeleton arguments that this claim is misconceived.

The too late case

229. Had I found otherwise, that Mr Burton and Ms Bamford had a good title to the lordship, I would not have closed the title simply because the conveyance of it to them occurred on 21 September 2004, after 13 October 2003. Land Registry allowed the application to register title to the lordship to stay alive whilst Mr and Mrs Brown were consulted and was prepared to register the title. Nothing would be achieved by closing the title if, contrary to my finding, Mr Burton and Ms Bamford did in fact have a good title to it.

Should the lordship title be closed?

230. For the reasons explained in paragraphs 60-65 above, the lordship title should be closed unless there are exceptional circumstances.

231. In my judgment there are no exceptional circumstances. If, ever since the 1836 stinting agreement, the Marton family and their successors after 1947 had regularly exercised the powers and functions of the lord of the manor and had continuously regulated the fell for the benefit of those with rights of

common and the local community, I would have been reluctant to close the title. Such continuity, acceded to by the local community, might have amounted to exceptional circumstances.

232. But that has not been the case. Until Mr Burton and Ms Bamford claimed the title no one appears to have acted as lord of the manor in Ireby for over a century.

233. I will therefore direct the registrar to give effect to the original application so far as it seeks to close the lordship title.

Should the fell title be closed?

234. Mr Burton and Ms Bamford were only entitled to be registered as proprietors of the fell because they were proprietors of the lordship. Since I have determined that they were not entitled to be proprietors of the lordship, it follows that they had no title to the fell and their registration as proprietors was a mistake.

235. If I were to close the fell title to correct that mistake I would prejudicially affect the title of Mr Burton and Ms Bamford. At present they have an absolute title. The title is not being closed because someone else has a better title which constitutes an overriding interest. Accordingly, the alteration of the register would amount to rectification within paragraph 1 of schedule 4 of the Land Registration Act 2002.

236. By paragraph 6(2) of schedule 4 of the Land Registration Act 2002 no alteration affecting the title of a proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake or (b) it would for any other reason be unjust for the alteration not to be made.

237. The villagers, very properly, do not suggest that Mr Burton and Ms Bamford caused or substantially contributed to the mistake by fraud. But they do say that Mr Burton and Ms Bamford caused or substantially contributed to the mistake by lack of proper care.

238. I do not accept that submission. By the time Mr Burton and Ms Bamford applied for first registration of the fell the lordship had been expressly conveyed to them, and they had been registered as proprietors of the lordship. The 1836 stinting agreement was rightly seen at the time as compelling evidence that the fell belonged to the lord of the manor.

239. I have already expressed my view that Mr Burton made the 2005 statutory declaration in good faith believing himself to be the owner of the fell by virtue of being owner of the lordship. His belief at that time was not only honest, it was also reasonable and based on a careful and proper assessment of what was then known to him. It would be unreasonable to have expected him at that stage to have gone beyond the 1836 stinting agreement.

240. The villagers say it would be unjust for the alteration not to be made because Mr Burton and Ms Bamford are obtaining a windfall. For £1's consideration they have gained 300 acres of fell.

241. I do not accept this submission. Ownership carries responsibilities as well as privileges. Mr Burton and Ms Bamford have incurred expenditure in taking and maintaining control of the fell. The villagers had notice of the application to register the fell but failed to object at the time. They did not take steps to close the title for another two years during which time Mr Burton and Ms Bamford arranged their affairs and spent money in reliance on their registered title. It would be inequitable to close the title now.

242. A striking feature of this reference is that the villagers do not make any claim to have title to the fell themselves. Their case is that no one owns the fell as Mr Squibb QC found in 1978. Their desire to remove Mr Burton and Ms

Bamford as proprietors, whilst understandable in the light of the breakdown in the parties' relationship, does not carry much weight with me.

243. In this particular case there no reason why it would be unjust for the alteration not to be made. In fact, it would be unjust and serve no useful purpose for the alteration to be made. The parish council does not support the application to close the title and it is far better that the fell should be owned than left in limbo.

244. I will therefore direct the registrar to cancel the original application so far as it seeks to close the fell title.

Costs and consequential matters

245. Costs normally follow the event. I would invite both parties to make written submissions on who should bear the costs, including those of the preliminary hearing, by 4.0pm 14 January 2011. In the light of my findings an order that there be no order as to costs is something I shall have to consider. If either party is ordered to pay costs to the other party, the assessment of such costs will be a detailed one conducted by a deputy costs judge so I do not require detailed figures from either party.

246. I will not draw up the direction to Land Registry until 24 January 2011, so that either party has a full opportunity to apply for permission to appeal and a stay. The hearing is formally adjourned to that date for that purpose. Any such application must be made in writing and served on both the adjudicator and the other party by 4.0pm 14 January 2011. The other party must within 7 days of receiving such an application serve a response on both the party making the application and the adjudicator. It will be decided on paper.

247. I would like to thank not just all three counsel, but Mr Baxendale and the parties themselves for the hard work done in researching the case.

**Dated this 10th day of December 2010**

**BY ORDER OF THE ADJUDICATOR TO HM LAND REGISTRY**