



COMMONS REGISTRATION ACT 1965

Reference Nos. 205/D/14 to
17 inclusive;
205/D/22 to
27 inclusive.

In the Matter of (1) Sutton Common,
and (2) Croker Hill (by some considered
part of Sutton Common), Sutton,
Macclesfield District, Cheshire

DECISION

These 10 disputes relate to the registrations at Entry No. 1 in the Land Section of Register Unit Nos. CL56 (Sutton Common) and CL63 (Croker Hill) in the Register of Common Land maintained by the Cheshire County Council and to the registrations at Entry Nos. 1 (Mr Tyler), 2 (Misses Mayer) and 4 (Mr and Mrs Storer) in the CL56 Rights Section and at Entry No. 2 (Mr and Mrs Storer) in the CL63 Right Section of the said Register Units, and are occasioned (as regards all the CL56 registrations) by Objection No. 13 made by Miss Ada and Miss Ellen Elizabeth Mayer and noted in the Register on 4 March 1970, (as regards the CL56 and CL63 registrations) by Objection No. 39 made by Mr A G Oldfield and Objection No. 43 made by Baron Schfauld and noted in the Register on 9 December 1970, and (as regards the registration at CL56 Rights Section Entry No. 1, Mr Tyler) by Objection No. 40 made by Mr A G Oldfield and noted in the Register on 10 December 1970.

I held a hearing for the purpose of inquiry ^{into} into the disputes at Stockport on 30 October 1979. At the hearing (1) Sutton Parish Council who made an application for both the Land Section registrations were represented by Mrs H T Shuttleworth their Clerk; (2) Mr Joseph Storer and Mrs Rosemary Anne Storer who applied for CL56 Rights Section Entry No. 4 and CL63 Rights Section Entry No. 2 and who are in the CL56 Ownership Section registered as owners of part ("the ABCDE Area") of the CL56 land, were represented by Mr C A Pickford solicitor of Elles Moxon Solicitors of Leek; (3) Mr Wilfred Tyler who applied for CL56 Rights Section Entry No. 1 (an application by him is noted in the Land Section) attended in person; (4) the Misses Mayer who not only made the said Objection but also applied for CL56 Rights Section Entry No. 2, were represented by Mr P W Watkins of counsel instructed by Barclay May & Co Solicitors of Macclesfield; (5) Mr A G Oldfield (the said Objector) was represented by Mr R H Farrimond solicitor of Blunt, Hayward & Berry, Solicitors of Macclesfield; (6) Mr Peter Anthony Buckleton of Civit Hill Farm, Sutton who claimed as Successor of Baron Schfauld was represented by Mr C V Sutcliffe solicitor of C B Sutcliffe & Co. Solicitors of Hazel Grove; (7) Mr Bertram Riley who applied for and later agreed to the cancellation of CL56 Rights Section Entry No. 1 and CL63 Rights Section Entry No. 3, was also represented by Mr Farrimond; (8) Mr Ernest Edward Eardley of Sutton Hall Farm, Sutton and Frank Harold Eardley of Ridge Hill Farm as persons who might give evidence, were also represented by Mr Farrimond; and (10) Mrs Jean Horah Wild (now, or until recently) the owner (but not the occupier) of Sutton Hall Farm as being a person whose solicitor might give evidence and produce documents was represented by Mr Gordon Hand solicitor of Barlow Parker & Co. Solicitors of Stockport.



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The lands in these two Register Units adjoin: they together contain 31.130 hectares (76,922 acres): in their application dated 31 May 1968, Sutton Parish Council treated them as all "Sutton Common". The land ("Croker Hill") in Register Unit No. CL53 is coextensive with OS No. 1255 containing 33.613 acres; it is a tract a little over $\frac{1}{2}$ a mile long from north to south, and nearly everywhere about 200 yards wide. The land ("the CL56 Area") in Register Unit No. CL56 is south of Croker Hill, and coextensive with OS Nos. 1284 and 1298 containing 13.665 and 24.646 acres; near to and just outside its south boundary stands a Post Office Telecommunications Tower, erected on ground higher than anywhere else in the vicinity. For the purpose of these disputes the CL56 Area must be considered as divided into 4 parts:- (1) a part ("the 1284 Part") being the land in OS No. 1284 and being the east part of the CL56 Area; (2) a part ("the Northeast Part") being the east part of OS No. 1298 and separated from the rest of this OS plot by a fence ("the East Dividing Fence") defined in the First Schedule hereto; (3) a part ("the Central Part") being the part of OS No. 1298 west of the East Dividing Fence and east of a fence which runs from the southwest corner of Croker Hill to a point near where the road or track (marked on the Register map) enters the CL56 Area from the south; and (4) a part ("the Highest Part") being to the west of the Central Part and comprising the remainder of OS No. 1298. The Highest Part includes the ABCDE Area above mentioned, such area being approximately the north half of the Part.

This matter was simplified by statements made at the beginning of the proceedings to the following effect. There was no opposition to the claim of the Misses Mayer (the grounds of Objection No. 13) that the 1284 Part was not common land, and that I should therefore at least remove this Part of the CL56 Area from the Register. The Misses Mayer did not claim that their right registered at CL56 Rights Section Entry No. 2 extended over either the Central Part or the Highest Part (so it would be limited to Northeast Part). Mr Tyler said that he wished to withdraw his application for registration of grazing rights, so as regards these my decision is (no person contending otherwise) that the registration at CL56 Rights Section Entry No. 1 should be avoided in accordance with Objection No. 40. Mr Pickford said that Mr E Hodson of Upton Fold Farm (the CL56 Land Section registration was made on his application) is now a successor of Mr and Mrs Storer the owner of the ABCDE Area. Mrs Shuttleworth said that the Parish Council at a meeting held on 27 October 1979 had decided that they did not now wish to support any of the registrations. Mr Sutcliffe referred to the grounds of Objection No. 43 (Baron Schfauld): "1. That the land was not common land ... 4. I am the owner of Moss Room on Sutton Common containing in the whole 2 roods and 30 perches: I am not able to supply a plan of this because no such plan is mentioned or contained in my deeds; but in a conveyance dated 10 January 1923 made between Amos Trueman (1) and Edith Ann Hockenhull Annie Bertha Riley and Minnie Gertrude Bridle (2) my predecessors in title such Moss Room was conveyed to the parties of the second part and it was subsequently conveyed to me on the 21st December 1965". I have a letter dated 28 September 1979 from Smith Fort & Symonds solicitors of Stockport saying that Baron Schfauld died in 1971 and that following his death Civit Hill Farm together with any rights in respect of Sutton Common were conveyed to his widow and her new husband, Mr & Mrs E R Holt for whom they act. Mr Sutcliffe said (in effect):- When Mr Buckleton in October 1974 purchased Civit Hill Farm from Mr & Mrs Holt, Moss Room was not included in the contract because (so their said solicitor said in answer to requisitions on title): "there was considerable confusion as to what this was. The Vendors believed it related to a right over certain land formerly common land which had been abandoned ...". So it seems



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(as suggested in the 1979 letter from these solicitors) that Moss Room still belongs to Mr & Mrs Holt. If anybody can say where or what Moss Room is or was, Mr Buckleton would or might ask Mr & Mrs Holt to pass it to him.

So in the result the only questions for detailed consideration at the hearing were:- (1) Whether there is as set out in the CL56 Rights Section Entry No. 2 (Misses Mayer) a right attached to Minnside Farm and Hanging Gate Farm to graze 20 cattle or 20 sheep over the Northeast Part. (2) Whether there is as set out in the CL56 and CL62 Rights Section Entry Nos. 4 and 2 (Mr & Mrs Storer) a right attached to Croker House Farm to graze 12 cows over Croker Hill and the whole or any part of the CL56 Area. And (3) Whether the parts if any of Croker Hill and the CL56 Area not subject to any right of common, are properly registerable in the Land Section as being "waste land of a manor" within the meaning of the definition of common land in section 22 of the 1965 Act.

Oral evidence was given by:- (1) Miss E Mayer who has lived at Hanging Gate Farm all her life (65 years); (2) Mr J Kirkham who has since 1970 farmed Hanging Gate Farm (including Minnside Farm) as the tenant of the Misses Mayer; (3) Mr B Riley was the tenant of these farms either of the Misses Mayer or their father Mr James Mayer for about 20 years before 1969; (4) Mr Ernest Eardley who from December 1966 was tenant of Sutton Hall Farm in succession to his father who was tenant from 1930; (5) Mr Frank Harold Eardley (the brother of the previous witness) who went to Sutton Hall Farm in 1930 when he was 6 years old and left about 1954; (6) Mr A G Oldfield (the said Objector); (7) Mr G Hand who ever since 1930 has been with Barlow Parker & Co and who throughout this period acted for the Fryer family who were the owners of Croker Hill and the Central Part; (8) Mr S Barber who had been acquainted with the CL56 Area all his life (63 years); and (9) Mr J Storer who jointly with his wife Mrs R M Storer acquired Croker House Farm under a conveyance dated 7 December 1965. Before or in the course of such evidence, the documents specified in the Second Schedule hereto were produced. On 1 November 1979, I inspected the CL56 Area and Croker Hill accompanied by Mr Pickford and Mr Farrinoni as solicitor for the persons he represented at the hearing; present also were Mr J & Mrs R A Storer, Miss E Mayer, Mr Kirkham, and Mr E E & Mrs Margaret Eardley.

Miss Mayer said (in effect):- Her grandfather and father lived at and were tenants of Hanging Gate Farm; her father purchased the Farm in 1921 and purchased Minnside Farm under the 1919 deed (EEM/3). She could identify the field shown in the plan EEM/4 particularly "Rossen Clough 13 A. 2 R. 26 P." as being the 1234 Part; it had always been fenced against the rest of the CL56 Area land and farmed with Minnside Farm. The Northeast Part had for as long as she could remember been grazed with cattle from Hanging Gate and Minnside during the summer months, about 20 animals she thought; in the winter they had to be fed. Up to the time of the erection of the below mentioned 1970 fencing cattle could wander over and between Croker Hill and the CL56 Area there being no adequate fence to prevent them although the boundaries were marked by low stone walls; except on one occasion in 1970, animals at Croker House Farm had not been grazed there; in 1970 Mr Storer put some on and "we sent him a letter to keep them off" (meaning a solicitor's letter) and he took them off after that.



Mr Kirkham said that during his tenancy he put cattle on the common throughout the summer, 15 to 20 animals usually 15, and sheep roamed over it in the winter (20 to 30). After the erection of the 1970 fences grazing was confined to the Northeast Part.

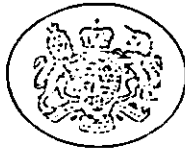
Mr Riley said (in effect):- During his tenancy of Hanging Gate and Minnside he had cattle on Croker Hill, Sutton Common (the CL56 Area), Minnguards Hill the Hill at Rossen Clowes (north of Croker Hill not to be confused with Rossen Clough above mentioned); the cattle were there from April to the end of January. There were never any animals from Croker House Farm put on either by Mr Storer or before him by Mr Fred Mayer who was there. There were stone boundaries between Croker Hill and the CL56 Area but they were not stock-proof.

The 1934 conveyance (GH/2) expressly includes: "closes of land situate at Sutton aforesaid and commonly known as Croker Hill containing fifty four acres three roods thirty one perches and numbered on the said Ordnance Survey, with the Numbers 935, 1255 and Part 1293 and now in the occupation of the said Francis Joseph Eardley and Sidney Straw ..."; the plan referred to in the said conveyance shows coloured red, the Hill of Rossen Clowes, Croker Hill and the Central Part. The land secondly included in the 1953 assent is described by reference in the said 1934 plan; as also that secondly conveyed by the 1964 conveyance.

Mr E E Eardley said (in effect) he had purchased Sutton Hill Farm from Mrs Wild (I suppose very recently). The tenancy had always included Croker Hill, the Central Part, and the Hill of Rossen Clowes. His father let (sub-let) the lands last mentioned to Mr Peter Whaley (for what period he could not say) and afterwards to Mr Tom Riley (the father of Mr B Riley who gave evidence) up to about 1970; they paid rent to his father to 1966 and afterwards to himself. The cattle from Croker House Farm had not been grazed there until about 2 months ago. About 1970 he erected fences (stock proof) between the Northeast Part and the Central Part and between the Central Part and the Highest Part; before then any cattle put on Croker Hill or on the CL56 Area could graze over the whole without difficulty; but there were always low boundary walls (visible or the remains of which were visible on my inspection) along the line of these 1970 fences.

Mr F A Eardley generally confirmed his brother's evidence. Mr Oldfield explained his motives in making the Objections. Mr Hand produced the documents above mentioned (GH/2). Mr Barber remembered that Mr Whaley fencing part of Croker Hill off and Mr Riley fencing more off.

The parcels of the 1961 conveyance produced by Mr Storer (JS/1) includes these words: "AND ALSO ALL houses ... closes parcels of land (particularly the Common Piece on Sutton Common measuring four acres two roods and thirteen perches ... appurtenant or reputed to be appurtenant to the said messuage or tenements) commons commonable rights ways ... to the said messuage ... belonging". The 1965 conveyance produced by him included the words: "and also such rights over Sutton Common as are appurtenant or reputed to be appurtenant to the said Farm". Mr Storer said (in effect):- The land he had acquired under 1965 conveyance was that detailed on the 1970 plan (JS/2), being: (a) the ABCDE Area being the same as the Common Piece of 4 acres 2 roods above mentioned (part of the CL56 Area, a little less than a mile south of Croker House Farm buildings); (b) a field ("the Detached Field") containing a little over 4 acres whose east side (about 90 yards long) is for that length the same as the west boundary



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(towards the north) of Croker Hill (about $\frac{1}{2}$ mile south of Croker House Farm buildings); and (c) various closes of land ("the Principal Fields") being the remainder of the said Farm (all within about 400 yards of Croker House Farm buildings). About 2 or 3 years after his purchase, he asked Mr F Mayer to Croker House Farm to discuss common rights; Mr Mayer identified the "Common Piece" with the ABCDE Area. He, Mr Storer had not grazed any animals on Croker Hill or the CL56 Area before he made his application for registration (dated 29 December 1969) under the 1965 Act; afterwards he had put 12 cows on and "had trouble with Mr Riley". He put them on "to keep my rights up". The cows went on from the Detached Field; they would then have wandered from Croker Hill over all the CL56 Area. He had no idea what happened about the grazing on the Hill and the Area before he went there and he had not exercised any "right" before his conversation with Mr Mayer. After Mr Riley's Objection he took the cows off.

Mr Storer's evidence even if it is considered by itself in my opinion falls short of establishing the right he claims. Even if any purported exercise of the right after the date of the Objection (September 1970) can be relied on, the grazing described by him (3 occasions at the most), to one of which at least objection was made, is not enough to establish a right under the Prescription Act 1332 or by presumed lost modern grant. As to there having been a right from time immemorial, the appearance of the land between the Detached Field and Croker Hill is against this: although when I made my inspection it would not be difficult for animals to go from one to the other, there was along the line separating this Field and Hill a continuous stone wall without any gate or gap; this wall, until the posts and wire were (apparently recently) placed on top, would not have been an obstruction to cattle; yet it would indicate clearly enough a boundary across which animals were not intended to be driven. I understood that the Detached Field was grazed from the Principal Fields by driving animals on a track which led to Hanging Gate Farm buildings; on appearance it is unlikely that animals from the Principal Fields could or would be driven onto Croker Hill otherwise than by the Detached Field; Mr Storer did not suggest the Hill was ever so grazed. Further the evidence of the other witnesses was against the claim of Mr Storer. As also is the 1934 conveyance by which Croker Hill and the Central Part were dealt with as land in "ordinary" ownership, and I have evidence that these lands were grazed by sub-tenants of the persons entitled under this conveyance or their successors. The circumstance that before the 1970 fences, the then existing low stone walls were not enough to prevent animals going over all the CL56 Area and Croker Hill, does not I think support Mr Storer's claim (as was at the hearing suggested); the absence of any cattle proof fences at that time is explained by Mr Riley and his father being able to graze in the double capacity as tenants or owners of Hanging Gate and Minnside Farms and as sub-tenants of Croker Hill and the Central Part. So far as there was any conflict between the evidence of Mr Storer and that of the other witnesses as to the amount of grazing upon Croker Hill and the CL56 Area from Croker House Farm, my finding is that except during the few months before the hearing, no animals from Croker House Farm were put on to the CL56 Area or on to Croker Hill except on the one occasion to which objection was (as above mentioned) made.

The Highest Part is so dry that even if Mr & Mrs Storer ever were the owners of the ABCDE Area (of which, apart from their registration as owners under the 1965 Act, there was no satisfactory evidence) it was not suggested (rightly I thought during my inspection) that there could be any significant grazing either on it or from it.



On the above considerations my decision is that there never have been at any now relevant time any rights attached to Croker House Farm over Croker Hill or over any part of the CL56 Area.

I accept Miss Mayer's evidence that the 123⁴ Part as "Rossen Clough" was always part of Minnside Farm not properly registrable as common land. Upon all the maps I have the CL56 Area is marked as "Sutton Common"; it may be before the erection of the 1970 fences that notwithstanding the low stone walls above mentioned, there was for grazing purposes little or no practical distinction between the Northeast, the Central Part and the Highest Part; nevertheless the circumstance that but for the 1970 fences Misses Mayer might have claimed grazing rights over the Highest Part and the Central Part (compared with the Northeastern Part of very little importance) does not prevent me giving full effect to the evidence of Miss E Mayer about the grazing she remembers. No evidence was offered at the hearing against the claim of the Misses Mayer. On my inspection it was apparent that grazing on the Northeast Part would for Minnside Farm be convenient. I consider therefore that a right attached to Minnside Farm in respect of cattle was established. The evidence about sheep was not so clear (Miss Mayer remembered sheep being grazed although Mr Riley said that he grazed none, that Mr Kirkham had grazed sheep in the winter); the claim is disjunctive "or", and I consider I ought to allow it. In the absence of any contention to the contrary I shall not exclude Hanging Gate Farm on the "attached" land because the combination of this Farm with Minnside since 1921 may be enough to render rights which were attached from time immemorial to Minnside to become attached to both Farms. My decision is therefore the claim of the Misses Mayer succeeds.

Croker Hill is (as above mentioned) dealt with in the 1934 conveyance as "ordinary" land and not as being waste land either because it was at one time subject to rights or for any other reason. Its appearance is against it being common land. Apart from the Parish Council's registration, I had at the hearing nothing to suggest that it was ever by anyone considered to be such; in view of the Parish Council's October 1979 resolution, I consider that registration to be unimportant. My decision is therefore that Croker Hill has never at any now relevant time been waste land of a manor.

The CL56 Area is on all the maps I have described as "Sutton Common"; in the 1919 indenture (EEM/3) and the 1965 conveyance (JS/1) mention is made of "the Manor and Forest of Macclesfield". The whole of the CL56 Area may at one time have been regarded as waste land, it being even now apparently of very little value; the Highest Part is apparently quite useless except possibly (as was said during my inspection) as a place for leaving animals for an hour or two before moving them elsewhere. Against these indications (very slight I think) that the CL56 Area may have been waste land of a manor, I have the 1934 conveyance by which the Central Part was treated as "ordinary" land; and that no-one protested against the 1970 fences. The "Common Piece" and the "Moss Room" above mentioned suggest Sutton Common may by some have been considered as common land because it was owned in parts (unfenced) in severalty. It was said that Mr Hodson was owner of Upton Fold Farm, and perhaps he could find some use for the Central Part and the Highest Part; however this may be in my opinion no useful purpose would be served by these Parts continuing to be registered under the 1965 Act. Balancing these considerations against each other, my conclusion is that neither the Central Part nor the Highest Part is registrable under the 1965 Act as waste land of a manor, and my decision is therefore that their registration should be avoided.

*I say no more about Moss Room, because (perhaps among other reasons)
I cannot identify it with any part of the CL56 Area.*



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For the above reasons, I confirm the registration at Entry No. 1 in the Land Section of Register Unit No. CL56 with the modification that there be removed from the Register the land in OS No. 1284 containing 13.665 Acres and the land to the west of the East Dividing Line as defined in the First Schedule hereto; I confirm the registration at Entry No. 2 in the Rights Section of the said Register Unit without any modification save such as is necessarily consequential on the removal of the said lands from the Register; I refuse to confirm the registration of Entry Nos 1 and 4 in the said Rights Section; and I refuse to confirm the registrations at Entry No. 1 in the Land Section and at Entry No. 2 in the Rights Section of Register Unit No. CL63.

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

FIRST SCHEDULE
(The East Dividing Fence)

In this decision the East Dividing Fence means the fence which in October 1979 was on the land in Register Unit No. CL56 running in a straight (or nearly straight line) across plot No. 1298 containing 24.646 acres delineated on the Ordnance Survey Map of which the north end is the southeast corner of plot No. 1255 containing 38.513 acres delineated on the said map, and of which the south end is a corner of the south boundary of the said plot No. 1298 situated northwest of the figures "1299; 3,540" on such map.

SECOND SCHEDULE
(documents produced)

Part I: Mr Tyler

WT/1	29 October 1979	Letter from him wishing to withdraw his application for registration of grazing rights over CL56.
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Part II: Mr Sutcliffe

PAB/1	25 September 1970	Answers on behalf of Mr & Mrs Holt to requisitions on title as to words in conveyance of 21 December 1965: "... land known as Moss Room on Sutton Common containing two roads and thirty perches ..."
PAB/2	25 April 1979	Copy letter from Smith Fort & Symonds to Mr E R Holt.

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Part III: Miss E E Mayer

- EM/1 27 October 1979 Statement by Mr E Hodson formerly of Upton Fold Farm that he has no objection to the deletion of the ECHJK land (1/2 1234 Part).
- EM/2 Extract from OS map (1/2500).
- EM/3 6 May 1919 Covenant by Mr F Watts with J Mayer to surrender lands held by the Lord of the Manor and Forest of Macclesfield.
- EM/4 Plan of Minnside Farm (found among the title deeds).

Part IV: Mr Hand

- GH/1 Map.
- GH/2 Epitome of Title.
- 28 February 1934 Conveyance by Mr A W Simon to Mr George Fryer of farmlands delineated on Plan Nos 1 and 2 being various OS Nos containing 173A. 1R. 3P. known as Sutton Hall Farm... and also the messuage Sutton Hall and also ...
- 10 December 1937 Will of George Fryer (he died 8 March 1952).
- 13 March 1954 Probate.
- 2 January 1958 Assent to vesting in Mr Jack Fryer by reference to the said 1934 conveyance.
- 27 January 1954 Conveyance by Mr J Fryer to Mrs Jean Nora Wild.

Part V: Mr Storer

- JS/1 17 December 1965 Conveyance by Mr Harold Ward to Mr J and Mrs R A Storer of Croker House Farm containing about 29 acres 3 rods.
- JS/2 26 March 1970 Letter from Morris Shaw & Moxons Solicitors of Leek annexed to the application dated 29 December 1970 of Mr & Mrs Storer for the registration of a right of common with which was a map showing the area of Croker House Farm.

TURN OVER



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JS/3 13 August 1961

Conveyance by Mr Frederick Mayer to
Mr Norman John Booth of Croker Farm.

Dated this 21st - day of Apri — 180

a. a. Bates Fuller

Commons Commissioner