



COMMONS REGISTRATION ACT 1965

Reference No 5/U/19

In the Matter of Flaxmere
Moss, Norley, Halton D

DECISION

This reference relates to the question of the ownership of land known as Flaxmere Moss, Norley, Halton D being the land comprised in the Land Section of Register Unit No CL. 13 in the Register of Common Land maintained by the Cheshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Norley Parish Council claimed to be the freehold owner of the land in question and Mr D Outram claimed to be the owner of part of the land and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Chester on 26 January 1977.

Mr J D Ford clerk to the Norley Parish Council appeared on behalf of his Council. Mr Whipp of Messrs A and J E Fletcher appeared on behalf of Mr Outram and Mr J R Holmes and Mr J Gee the only two applicants for Rights whose registrations are final appeared in person.

The Council based its claim on an Award made pursuant to an Act of 1776 whereby the Commissioners did "leave set out assign allot and appoint Flaxmere Moss for the purpose of getting and taking turf or peat therefrom in the same manner in such manner as the same has heretofore usually got and by all and every person or persons who shall have a right thereto." In my view this language did no more than create or confirm common rights and I can find nothing in the Award whereby the land as distinct from the rights over it was vested in any person and I am therefore not satisfied that the Council is the owner of the land. Mr Ford stated that his Council would be content and might even prefer that the land should be subject to protection.

Mr Outram acquired Flaxmere House in 1971 from Ethel Wood who acquired Flaxmere House in 1961. A statutory declaration by Ethel Wood made on 5 March 1971 was produced wherein she stated that she had been the tenant of Flaxmere House for 24 years immediately prior to 1961 and that throughout the period of 34 years of her occupation the land claimed by Mr Outram had been an integral part of Flaxmere House and she had exercised all the rights of occupier without restriction. She did not in her declaration state what rights she had exercised.

Mr Whipp told me that the land claimed by Mr Outram had been built up some 6 or 7 ft and was plainly an artificially created bank and he based his case on the building of this bank which has been in existence for more than 30 years as conferring a possessory title on Mr Outram. Mr Outram gave evidence confirming that the bank was



demonstrably artificially created. Mr Ford, Mr Holmes and Mr Tee did not contest this evidence and were all agreed that in the context of Flamere Moss the land claimed by Mr Outram is insignificant and not worth worrying about. In these circumstances I am prepared to find on the very limited evidence that Mr Outram is the owner of the land coloured pink on the plan annexed hereto.

I shall accordingly direct the Cheshire County Council, as registration authority, to register Mr D Outram as the owner of that part of the land coloured pink in the said plan under section 8(2) of the Act of 1965.

In the absence of any evidence I am not satisfied that any person is the owner of the remainder of the land and it will therefore be subject to protection under section 9 of the Act of 1965.

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

Dated this 21st day of February

1977

Y. A. Little

Commons Commissioner