



COMMONS REGISTRATION ACT 1965

Reference No.5/D/7

In the Matter of Gale Moss,  
Norley, Cheshire.

DECISION

This dispute relates to the registration at Entry No.1 in the land section of Register Unit No.C.L.12 in the Register of Common Land maintained by the Cheshire County Council and is occasioned by Objection No.6 made by Mrs. H.C. Ingram, Mr. C.C. Fosnett, and Mr. H.W. Burrell, and noted in the Register on 2nd January 1969.

I held a hearing for the purpose of inquiring into the dispute at Chester on 15th May 1973. The hearing was attended by Mr. F. Blain, the Clerk of the Norley Parish Council, which applied for the registration, and by Mr. J. Fitzhugh, Q.C. for the Objectors.

There being no entry in the Rights Section of the Register Unit, Mr. Fitzhugh took the point that the land in question cannot fall within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 as land subject to rights of common. For the reasons given in my decision in In the Matter of Kingsley Moss, Norley (1973), No.5/D/3, I find myself unable to accept this contention.

Mr. Blain based his case for the existence of a right of common upon an inclosure award made on 17th December 1819 under an Act for inclosing the Forest of Delamere passed in 1812 (52 Geo.III c. cxxxvi). This Act was amended by two Acts passed in 1814 and 1818, but the provisions of the amending Acts have no relevance to the present case. There was produced to me a copy of what purported to be the Act of 1812, but with the sections unnumbered, which indicates that the document is a copy of the Bill. For the purposes of this decision I have used a copy of the Act as printed by the King's Printer with the sections numbered.

It appears that the registration is intended to comprise the land numbered 73 on the award map. This land is described in the award as a "moss pit or turbarry". The Commissioners stated that they had found it impracticable to drain it so as to make it sufficiently dry to be used for arable or pasture land, and they awarded and set it out to remain open and uninclosed to be held and enjoyed by such person or persons as before the passing of the Act of 1812 had of right held, used or enjoyed it. This they were empowered to do by section 5 of the Act.

After the award of 1819 there is a gap in the evidence adduced before me until an indenture dated 18th September 1919 made between (1) Sir Philip Henry Brian Grey Egerton; (2) Oswald Mosley Leigh and John Cullimore; and (3) Robert Harold Fosnett, whereby certain land was conveyed to Mr. Fosnett. It appears from the plan drawn on the indenture that the land comprised in this indenture included the whole of the land shown on the register map. The conveyance is not stated to be subject to any rights of other persons. There is also a statutory declaration, made jointly by John Cullimore and Frank Richmond on 13th September 1919, that the land conveyed had been in the possession of the



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vendor, who had been in receipt of the rents and profits since 1st September 1891. For many years the land conveyed to Mr. Posnett has been let to angling clubs.

This evidence is somewhat unsatisfactory, since it does not disclose how or by whom the land was held and enjoyed before the passing of the Inclosure Act or how it was acquired by the predecessor in title of the 1919 vendor. It is recited in the Act that the land to be inclosed was subject to such rights of agistment and commonage, or other rights, as the owners and occupiers of any messuages, lands, tenements, and hereditaments in the several townships, hamlets, or places adjoining or lying near to Delamere Forest might prove themselves to be entitled. It does not follow from this recital that the whole of the open and uninclosed land in the Forest was subject to rights of common, though the description in the award of the land in question as a turbary and the reference in section 50 of the Act of 1812 to holding and enjoyment as of right before the passing of the Act, if considered in isolation, could indicate that this land was subject to rights of turbary and continued to be so after the award. On the other hand, the provision in section 52 of the Act that the allotments to be made by the Commissioners were to be in full compensation, satisfaction, and discharge of all rights of common in the Forest, and that all rights of common were to be extinguished seems to indicate that the rights which were preserved by section 50 were not rights of common. However, it does not seem to be necessary to form a concluded opinion upon this point, since the absence of any evidence of the exercise of a right of turbary over this land by anyone during a period of over a century and a half drives me, in the absence of any other explanation, to the conclusion that any rights there may have been have long since been abandoned by those entitled to them.

For these reasons I refuse to confirm the registration.

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 25<sup>th</sup> day of June 1973

  
Chief Commons Commissioner