



COMMONS REGISTRATION ACT 1965

Reference Nos 20/U/57  
20/U/100

In the Matter of (1) Knapperthaw  
Common (No 1) and (2) Knapperthaw  
Common (No 2), Lowick, South Lakeland  
District, Cumbria

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These references relate to the question of the ownership of lands both known as Knapperthaw Common (Nos 1 and 2), Lowick, South Lakeland District, being the land comprised in the Land Section of Register Unit No CL. 24 and No CL. 256 in the Register of Common Land maintained by the Cumbria (formerly Lancashire) 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 these references Mr R W Hind of Lowick Hall said (letter dated 16 October 1973) that as Lord of the Manor of Lowick (jointly with his wife Mrs J Hind) he believed the ownership of these lands should be registered in their names, they having bought the Lowick Hall Estate some three years ago, and also said (letter dated 21 March 1978) that he claimed ownership. No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held hearings for the purpose of inquiring into the question of the ownership of the lands at Kendal on (for the CL. 242 land) 25 April and (for the CL. 256 land) 26 April 1978. At the 25 April hearing Mr Hind attended in person on his own behalf and as representing his wife, Mrs J Hind. At the 26 April hearing there was no attendance.

At the 25 April hearing, Mr Hind gave oral evidence in support of his ownership claim not only to the CL. 242 land but also to the CL. 256 land, and so as to save him the trouble of coming to Kendal on the following day, I said I would treat his evidence as having been given at the 26 April hearing if no one then attended.

As to the CL. 242 land:-

Mr Hind produced:- (1) A conveyance by which Mr J A Mather and Mrs N Mather, after reciting (among other things) that Mr John Henry Mather died 30 April 1966 and that they were the trustees of an assent dated 8 June 1970, conveyed to Mr & Mrs Hind "FIRST lands as therein described and delineated on the plan annexed, and "SECONDLY ALL THAT the Manor of Lowick in the County of Lancaster together with all customary and other rents commons and wastes sporting rights and all other manorial rights in or over the said Manor and other hereditaments incident or belonging to the said Manor or the Lordship thereof or forming part or parcel of such Lordship the ambit or area of the same Manor being the Lands shown edged with pink on the plan numbered two attached to the conveyance dated the twenty-fourth day of September one thousand nine hundred and twenty-eight forming the root of title hereof (exclusive of the areas shown edged blue on the said plan numbered two and exclusive also of the area comprised in...(conveyances 1960 and 1966)..."; (2) an extract certified by Gatey Heelis & Co, Solicitors of Ambleside from the said 1928 conveyance plan; (3) an abstract dated 1970 of the title of the trustees of Dr J H Mather of the property situate and known as Lowick Hall together with the manors rights and advowsons which included the said 1928 conveyance.



The CL. 242 land is not included in the land delineated on the 1970 conveyance plan showing that thereby "First" conveyed; nor is it in any way as a distinct piece of land or otherwise delineated on the 1928 conveyance plan, although it is within the area thereon edged with pink.

The CL. 242 land (according to the Register map) is a triangular piece containing 3.020 acres, the southern end of which joins the building forming part of Knapperthaw. The registration was made in consequence of a registration made in the Rights Section (made on the application of Mr E J Darby) of a right attached to Nettle Slack Farm to graze 20 sheep or 4 head of cattle and to cut and take bracken.

Mr Hind said that the CL. 242 land slopes upwards from Knapperthaw and has on it some scrub, and is crossed by a track or bridleway which after leaving the north-corner of the land leads to Lowick Common which is about a third of a mile away. He is now the undisputed owner of Lowick Common (a very large area to the northeast) because it is registered under the 1965 Act (Unit No CL. 40) and Dr J H Mather (his predecessor in title) was registered as owner. He (Mr Hind) since becoming owner has done nothing to the CL. 242 land.

Three days after the hearing I walked across the CL. 242 land and also the said track as far as and through the gate leading into Lowick Common. In appearance alone, there is no obvious reason why Lowick Common and the CL. 242 land should (although of course they might be) be in the same ownership. Having regard to its situation in relation to the building called Knapperthaw, the CL. 242 land appears to be of some importance and on appearance alone I should have expected the owner of these buildings to have some interest in it. There is no evidence apart from the said Rights Section Entry as to the relationship between Nettle Slack Farm and these Knapperthaw buildings; assuming that they are held separately (Mr Hind did not suggest that he had any interest in either), it would I think be surprising if Mr and Mrs Hind were the owners of the CL. 242 land subject only to rights of common registered on the application of Mr Darby.

As regards the 1928 map Mr Hind readily agreed that much of the land within the pink edging on it was ordinary farm land not in his ownership and that when he had bought the Lowick Estate although in the particulars of sale (he showed me a copy of the plan annexed to them) Lowick Common was expressly included (I did not investigate how it had been conveyed to Mr & Mrs Hind) there was nothing in the particulars to suggest that the CL. 242 land was included.

Although I accept Mr Hind's contention that the 1928 map is some evidence that the CL. 242 land was in 1970 within the word "waste" in the above quoted "Secondly" in the 1970 conveyance; but such evidence seems to me to be of little weight. Contra I have the fact that the CL. 242 land was not expressly included either in the particulars of sale or in the conveyance which followed, and having regard to the appearance of the land as above mentioned, I consider this omission to be some evidence that neither Dr J H Mather nor his trustees ever thought they were the owners, and that there is therefore some good reason for not treating the 1928 map as evidence of ownership. Additionally, having regard to the apparent importance of the CL. 242 land to Knapperthaw, I think Mr Hind's lack of activity in relation to it, casts some doubt on his claim. Under section 8 of the 1965 Act I am required to say whether I am "satisfied that any person is the owner"; and in my opinion  $\rightarrow$  it is not enough for Mr Hind to establish that he might be the owner. Balancing the conflicting considerations above mentioned, I think the scale tips against his claim, and accordingly I am not satisfied that he and his wife are the owners as they claim.



As regards the CL. 256 land:-

According to the Register map this land is a triangular piece situate at a road junction a short distance to the west of the CL. 242 land; it contains (according to the Register) about 0.089 of a hectare (.021 of an acre). *The registration was made on the application of the Friends of the Lake District.*

Mr Hind described it as roadside waste. Except that the land being differently situated may be of comparatively little importance to anyone, the evidence in support of the claim is the same as that summarised above in relation to the CL. 242 land.

If as I have concluded that Mr Hind is wrong about his claim to the CL. 242 land, it necessarily follows that he is wrong in his claim to the CL. 256 land.

As regards both the CL. 242 and CL. 256 lands:-

At the hearing there was no evidence or any suggestion that anyone other than Mr & Mrs Hind could be the owner of either of these lands; I am therefore not satisfied that any person is the owner of either of the lands, and they will remain 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 16<sup>th</sup> day of May —

1978

a. a. Basten Fuller

Commons Commissioner