



In the Matter of East Butterwick Hale  
and Common, Humberside

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL 85 in the Register of Common Land maintained by the Humberside 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, claims to ownership of the land in question ("the Unit land") or of parts of it were made by (1) East Butterwick Parish Council (2) M K Oliver and L Drakes (3) Mr J T Coy (4) the legal personal representative of Frank Trafford deceased.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Brigg on 25 October 1979.

At the hearing Mr W Bains, Solicitor, appeared on behalf of the Parish Council, Mr A Brown, Solicitor, on behalf of Mrs Mary Elizabeth Trafford the personal representative of Frank Trafford deceased, and Mr J T Coy. There were no other appearances. The Parish Council and Mrs Trafford were each claiming ownership of the whole of the Unit land, which is of an area of some 120 acres. Mr Coy claims ownership of a small patch of land measuring 15 x 11 yards.

2. Mr Bains produced a copy of a tithe rent charge Apportionment of 1841 relating to "that part of the Township of East Butterwick which is in the parish of Bottesford in the County of Lincoln". In the list of lands involved appear four as follows:-

<u>Number on Plan</u>			<u>Quantities</u>		
			a.	r.	p.
56	Cottage Garden	Homestead	1	4	
57	Cottage Garden	Homestead	1	25	
58	The Hale	Common	61	1	5
59	The Common	Common	53	3	12

In the list, the landowners of all four pieces of land are stated to be "Butterwick Township of". Comparing the plan with the register map it appears that all four pieces constitute the Unit land, though there may be a doubt whether the two tiny pieces Nos. 56 and 57, which are in the north west corner of the whole area, are inside the boundary of the Unit land.

The Parish Council's Minute Book shows that over the years the Council was active in regard to different matters affecting the Hale and the Common. From 1897 onwards there are regular references to the effecting of repairs to pathways or to the bridge leading to the Hale or Common and to the Hale footpath: to approaches to other authorities to remove or control an encampment of tent and van dwellers: to steps to prevent the letting loose of horses on to the Hale by dealers who had no right or authority to do so.

Mrs P Preston, Clerk to the Parish Council during the period 1968 to 1977, gave evidence and produced copies of public notices advertised in the local press by the Parish Council in November 1971 which stated that any person not a registered owner of grazing rights who continued to graze animals on the Hale would lose access to the Hale and their animals would be impounded and sold. A board with a notice of the same effect was erected on the Hale and a letter to the owners of grazing rights was



written and they signed agreements to the steps proposed to be taken by the Parish Council. From time to time the Council wrote to or telephoned Mr Frank Trafford, an owner of grazing rights, requesting him to reduce the number of cattle grazed by him to the number specified in the register: and when Mr Trafford requested the Severn-Trent Water Authority to close certain sluices so that drinking water for his cattle on the Hale would be provided, the Council refused its consent because he was grazing cattle in excess of the number to which he was entitled.

3. (a) As to a small area of the Unit land in N W corner, Mrs Trafford's claim as personal representative of Frank Trafford was based on a Conveyance on sale dated 28 October 1949 made between Fred Drury (1) and Frank Trafford (2), whereby there were conveyed to Mr Trafford three tenements or cottages therein described. There is a plan attached to the Conveyance from which it appears that these premises are within the boundary of the Unit land as shown on the Register map, but this is not altogether certain. In evidence Mrs Trafford said that there were two cottages on the purchased land which were demolished.

(b) As to the remainder of the land Mrs Trafford's claim was based on the acquisition by Mr Trafford of a possessory title. In evidence she said that since her marriage in 1941 Mr Trafford grazed a large number of cattle and some horses on the Unit land. He did some fencing and repairs to fencing to keep his cattle from straying: she remembered him turning gypsies and other people's cattle off the land.

4. Mr Coy's case was presented by his son-in-law, Mr Samson. He produced a Conveyance dated 26 November 1876 between W T Page and Another (1) and Thornhill Coy (2). The property conveyed was of a piece of land 15 yards long and 11 yards broad situate in Butterwick Hale together with the cottage thereon. Thornhill Coy was Mr J T Coy's grandfather and on his grandfather's death, his father Thomas Coy succeeded to the property. Thomas left it by his will to his widow. She died some 20 years ago intestate leaving Mr J T Coy as the only child. Apparently letters of administration to the mother's estate were not taken out, but on the evidence I am satisfied that Mr J T Coy is the owner of the premises described in the Conveyance. There is no plan on the Conveyance and the difficulty arises of identifying those premises as part of the Unit land. The cottage has long since been demolished and there is no physically identifiable boundary of the premises, which are not in use or occupation by Mr Coy. He and Mr Samson believed that they adjoined the eastern boundary of the land bought by Mr Trafford in 1949 and there was some confirmation of this by Mr Chapman, Clerk to the Parish Council, who said that there were traces of a fence and foundations of a building in that area.

5. On the evidence I am satisfied that (A) Mrs Trafford is the owner of such part of the Unit land as is comprised in the Conveyance to Mr F Trafford dated 28 October 1949 and shown on the plan attached thereto: (B) Mr J T Coy is the owner of such part of the Unit land as is comprised in the Conveyance to Thornhill Coy dated 26 November 1876 the land comprised in that Conveyance being identified as a piece of land 15 yards long and 11 yards broad adjoining the eastern boundary of the land comprised in the Conveyance of 28 October 1949.

As to the remainder of the Unit land the possessory title claimed by Mrs Trafford is, in my opinion, not established. Mr Trafford's firm is the owner of grazing rights which were registered in 1968 in respect of up to 150 beasts, but which were modified by the direction of the Chief Commons Commissioner dated 19 September 1974 to 4 beasts his activities in regard to the Unit land which Mrs Trafford described are, in my view attributable to the exercise of his grazing rights and do not constitute acts of adverse possession and it is of some significance that in November 1971 written agreement to what the Council proposed ~~was~~ given by him or his firm as owners of grazing rights and without any suggestion that it was for him as owner of the land to decide the matter.



This, as to the remainder of the Unit land, leaves the claim of the Parish Council and on the evidence I am satisfied that the claim has been made out.

I shall accordingly direct the Humberside County Council to register, under section 8(2) of the Act of 1965, (1) Mrs M E Trafford as the owner of the part of the Unit land described in (A) above: (2) Mr J T Coy as the owner of the part of the Unit land described in (B) above: (3) East Butterwick Parish Council as the owner of the remainder of the Unit land.

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

12 November

1979

*L. J. Morris Smith*

Commons Commissioners