



COMMONS REGISTRATION ACT 1965

References: No.20/D/8  
No.20/D/9

In the Matter of Accrington Moor.  
Accrington, Lancashire.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section and Entry No.1 in the Rights Section of Register Unit No.C.L.41 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by Objection No.2 made by Mrs. Betsy Ann Nelson and noted in the Register on 4th December 1970.

I held a hearing for the purpose of inquiring into these disputes at Preston on 7th June 1972. The hearing was attended by Mrs. Betsy Ann Nelson ("the Objector") who was represented by Mr.J.S. Greenwood solicitor of Messrs. E.B. Haworth & Nuttall of 7 Lord Street West, Blackburn, by the Lancashire County Council ("the County") who were represented by Mr. J.A. Strong their Assistant Solicitor, by Mr. Allan Pilkington in person and by Mr. J. Bentley in person. Both these disputes related to the same land, and by agreement I heard them together.

These disputes relate to a piece of land ("the Moor") having an area of about 35 acres. It was provisionally registered in the Land Section of the Common Land register on the 14th November 1967 in consequence of an application made on the 27th October 1967 by Mr. Pilkington for the registration of a right of common described as:-

"A one third usage right (in common with the owners of Friar Hill Farm and Nigher Friar Hill Farm) of Accrington Moor for the purpose of grazing of up to 9 cattle and for sheep at any time and for any length of time"

the right being attached to a nearby Farm known as Lower Friar Hill Farm ("the Lower Farm"). The registration in the Rights Section was made pursuant to the same application. The grounds of objection were stated as follows:-

"As to the registration of the lands as common land, that the land was not common land at the date of registration. As to registration of a right of common the right does not exist at all".

The substance of the objection as outlined on behalf of the Objector was as follows:- The Moor was up to the commencement of the Law of Property Act 1925 copyhold of the manor of Accrington held in undivided third parts belonging as to one third to J. and E.A. Crook who also owned Friar Hill Farm ("the Friar Farm"), as to another one third to S. Wade who also owned the Lower Farm and as to the remaining one third to J.W. Proctor who also owned Nigher Friar Hill Farm ("the Nigher Farm"). As a result of the Act the Moor became freehold land held upon the statutory trusts for sale in the same undivided parts as before. The Friar Farm adjoins the Moor and the Lower Farm and the Nigher Farm are nearby: any grazing by any of the



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three owners was in exercise not of a right of common over the Moor appurtenant to his Farm but of a beneficial ownership in a third part of the Moor. In 1960 the ownership of Friar Farm became separated from the ownership of one third part of the Moor; under a conveyance dated the 7th June 1969 and made by the Objector, this third part became vested in Mr. G.G. Strutz who owns Meadow Top Farm, a farm which also adjoins the Moor. Whether the ownership of the Lower Farm had become separated from the ownership of another one third part of the Moor had (as below mentioned) been questioned. For the purpose of these proceedings, on behalf of the Objector it was conceded that Mr. A. and Mrs. H. Jacques who now own the Nigher Farm also now own the remaining third part of the Moor; although it was said that Mr. Strutz and the Objector as his mortgagee might in other circumstances contend that he or they now owned this third part under the conveyance of the 7th June 1969 which purported to include the Objector's interest, if any, in it. As against the rights registered by Mr. Pilkington, the Objector relied first on an agreement dated the 6th December 1958, made between Mr. Pilkington and Mr. J.E. Nelson and relating to Mr. Pilkington's purchase of the Lower Farm and secondly on a recent statement signed by Mr. Pilkington requesting the County to remove the provisional registration. As against the registration of the land as common land, the Objector claimed that if Mr. Pilkington had no right of common, the land was not common land within the definition of the 1965 Act.

Mr. Pilkington was interested in the proceedings as the former owner of the Lower Farm and as the person who was, as above mentioned, responsible for the registration now disputed. He had, he told me, applied for registration because in 1959 when he bought the Lower Farm he had been told that rights of grazing over the Moor were appurtenant to it, but he had not since he had purchased grazed any animals on the Moor because the way between the Lower Farm and the Moor had been impassable. Mr. Bentley had recently purchased the Lower Farm, and in these proceedings he and Mr. Pilkington stood together.

The County was concerned that the public who benefitted by the registration of the land as common land, should not lose this benefit in the absence of evidence that the registration could not be sustained.

My task at the hearing was simplified by certain concessions made by the parties attending to each other. The Objector accepted that Mr. Pilkington had applied for registration in good faith, and ought not therefore to be held liable for any of the costs of the Objector consequent thereon. Mr. Pilkington and Mr. Bentley said they wished to be able to claim, whatever my decision might be, that they were or one of them was under the purchase of the Lower Farm or otherwise, entitled beneficially to one of the third parts of the Moor in case they might be advised that the agreement of the 6th December 1958 did not preclude this claim; although this claim was not agreed by the Objector it was agreed on her behalf that my decision should be without prejudice to it. In 1971 the Objector requested the County as registration authority to cancel the registrations on production of a statement signed by Mr. Pilkington that he was when he made his application for registration, mistaken in thinking that he had any rights over the Moor; the County refused this request, deciding that the status of the Moor should be referred to a Commons Commissioner; the Objector did not suggest that this refusal was (the County had not then the



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evidence which I now have) unreasonable.

The County in a letter dated the 1st June 1972 consented to the Objector giving evidence by affidavit. The evidence of the Objector consisted of two affidavits sworn on the 5th June 1972, one by Mr. R.H.S. Brunt, and one by the Objector and the exhibits thereto; one of these exhibits was a copy statutory declaration by Mr. J.E. Nelson made on the 18th March 1969, and the original of this declaration was produced to me. No other evidence was given to me on behalf of the Objector or any other person attending.

As to the registration in the Rights Section:-

Mr. Brunt in his affidavit said that he was solicitor for the Objector and her husband Mr. J.E. Nelson, that he had in his possession the title deeds of the Friar Farm, the Lower Farm and Meadow Top Farm and that he had with the consent of the owners Mr. A. and Mrs. H. Jacques examined the title deeds of the Nigher Farm. He exhibited copies of (i) a surrender dated the 15th October 1872 relating to a third part of the Moor (ii) a surrender dated the 25th January 1922 relating to another third part of the Moor, (iii) an assent dated the 14th October 1968 vesting the Friar Farm and a third part of the Moor in the Objector, (iv) a conveyance dated the 7th June 1969 by which the Objector conveyed to Mr. G.G. Strutz Meadow Top Farm and "two undivided third parts" of the Moor and "the Vendors' interest (if any) in the remaining one third part" and (v) a conveyance also dated the 7th June 1969 by which Mr. J.E. Nelson conveyed to Mr. G.G. Strutz a third part of the Moor "for all the estate and interest (if any) of the Vendor therein". He concluded his affidavit by stating that he had had conduct of the affairs of the Objector and her husband since the 1st November 1966 and that he had not become aware of any rights of common or of any rights equivalent thereto having been exercised or claimed save by those persons who had an interest by virtue of their ownership or purported ownership of one or more of the undivided third parts in the Moor. Mrs. Nelson in her affidavit stated from her long association with the Moor (she had known it since her marriage in 1928) she believed that there are no common rights exercisable over the Moor. There being no other evidence, and it being clear that neither Mr. Pilkington nor Mr. Bentley wished to support the rights of common as registered, I conclude that the Objector has established her objection that the rights registered do "not exist at all".

As to the registration in the Land Section:-

In my opinion the rights of grazing, which the owner of an undivided share of land, can exercise as such owner are not "rights of common" over the land either as these words are ordinarily understood or within the special meaning given to them by section 22 of the 1965 Act. Even assuming that the Moor is "an open space of land" within paragraph 2 of Part V of the First Schedule of the Law of Property Act 1925, the "rights of access or user" which the owner of each third part has over it are not, I think, "rights of common". There being evidence as above mentioned that no one apart from such owners, has any rights over the Moor, I can, I think, properly conclude that the land the subject of this reference is not subject to any rights of common within the meaning of paragraph (a) of subsection (1) of section 22 of the 1965 Act.



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Accordingly unless this land comes within the words "waste land of a manor not subject to rights of common" used in paragraph (b) of the subsection, it cannot be common land within the meaning of the 1965 Act. By the said surrender on the 15th October 1872, after reciting a surrender and admittance made in 1839 by which three persons were entitled to the land therein described (which I identify as the Moor) in equal undivided third parts as tenants in common, it was remembered that J. Aitken had been admitted to one of these three third parts according to the custom of the Manor of Accrington. By the said surrender of the 25th January 1922, it was remembered that S. Wade had been admitted to another of the third parts according to the same custom. In both these surrenders the land was described as "heretofore part of certain open and unenclosed lands and waste grounds situate within the said manor...." From the fact that under the two surrenders, persons were admitted by the Steward as copyholders of a third part of the Moor, I conclude that it had sometime before 1839 under some custom of the manor ceased to be waste land of the manor and that I should therefore read the word "heretofore" in the above quotation as referring to something which happened before 1839.

I therefore conclude that the Objector has established her objection that this land "was not common land at the date of the registration".

For these reasons I refuse to confirm the registrations.

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.

a. a. Baden Fuller

Dated this 28<sup>th</sup> day of June 1972

Commons Commissioner