



COMMONS REGISTRATION ACT 1965

Reference No. 220/U/5

In the Matter of Harrop Fell
(including Harrop Common and
Harrop Fold) Grindleton, Ribble
Valley District, Lancashire

DECISION

This reference relates to the question of the ownership of land known as Harrop Fell (including Harrop Common and Harrop Fold), Grindleton, Ribble Valley District being the land comprised in the Land Section of Register Unit No. CL 65 in the Register of Common Land maintained by the 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 this reference Ian B Dearing, Solicitor of Clitheroe said (letters of 15 May and 18 June 1981) that persons he named and represented and also the Duchy of Lancaster or the Crown might be the owners; and the Crown Estate Commissioners said (their Solicitor's letter of 6 July 1981) that the land is not Crown property under their management. No person claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of enquiring into the question of the ownership of the land at Preston on 25 November 1981. At the hearing (1) Mr Frank Robinson owner of Higher Harrop Fold Farm in succession to Mr Henry Robinson now deceased on whose application the registration at Rights Section Entry No. 3 was made, and (2) the Attorney General for the Duchy of Lancaster were both represented by Mr I B Dearing; (3) Mr Jack Baron West and Mrs Zelma West an application by whom is noted in the Land Section attended in person, and (4) Grindleton Parish Council were represented by Mr J B West, their chairman.

The land ("the Unit Land") in this Register Unit was the subject of a hearing before me at Preston on 24, 25 and 26 January 1978; my decision is dated 14 March 1978 under reference Nos 220/D/13-19. Upon the evidence given in these 1978 proceedings and the inspection I made at the time, I can say that the Unit Land is divided into three parts:- (1) By far the greatest part ("the Fell") is known as Harrop Fell and contains 206.14 acres. (2) Another part ("the Common") is an L shaped piece containing 4.155 acres adjoining the Fell and bounded at its northeast end by Black Brook. And (3) the remaining part ("the Fold") is an irregularly shaped piece containing about 1/2 an acre adjoining the Common and bounded on the outside by the said Brook, farm buildings or dwellinghouses, or the walls and gardens or other lands held therewith and bounded on the inside by some farm buildings.

Mr Dearing said that he had considered the documents of title held by Mr F Robinson and other historical information available to him which suggested further investigation on the lines he indicated might establish the ownership of the Unit Land with greater certainty than was then possible. Mr C J M Purvis who is now and has been since 1949 Surveyor of Lands to the Duchy of Lancaster in the course of his oral evidence produced a copy of a conveyance dated 29 November 1938



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by which Sir B E H Burcham, Mr C R Chadwick and Mr W B Wasbrough as trustees of the statutory trusts for sale arising under two deeds of appointment dated 29 March 1926 and 2 May 1928 conveyed until His Majesty in right of his Duchy of Lancaster the land known as the Bowland Estate as therein described. Part III (headed "As to sporting way leaves and other rents") of the Second Schedule to the said conveyance (headed "containing particulars and matters relating to the property hereby assured") included the following:- "(Item No.) 43. (Short description of Holding) Harrop Fell Common land. (Tenant) Ryden, H. (Rent) £4.0.0. (Remarks) Sporting Rights". He said that this rent had been received by the Duchy from Mr Ryden from the date of the conveyance until the year 1960.

After some discussion as to the effect of the evidence summarised above and to the possibility that a further investigation might be productive, I ~~said~~ ^{said} that ~~is~~ ^{if an} application for an adjourned hearing was made to me before 25 February 1982 I would adjourn the proceedings but if no such application was made I would give a decision on the evidence which I had then heard.

I have a letter dated 24 February 1982 from Mr Dearing saying that searches in the West Riding of Yorkshire Registry of Deeds indices for the material periods had failed to bring to light any additional information which could clarify this matter and therefore Mr Frank Robinson could not adduce any more evidence which might materially assist. In these circumstances I now give my decision on what was said at the hearing.

Mr Dearing's first contention was that the evidence of Mr Purvis ^{showed} ~~that~~ that the Duchy owned at least the sporting rights over the Unit Land or at least the sporting rights over the Fell and that accordingly I should direct this ownership to be registered under the 1965 Act.

In the 1965 Act ownership is defined as: "ownership of a legal estate in fee simple", see section 22 subsection (2). By section 1 subsection (1) of the Law Property Act 1925 ^{the} only estates in land which are "capable of subsisting ... at law are — (a) An estate in fee simple absolute in possession; (b) A term of years absolute". By subsection (2) of the section the "only interests ... in ... land which are capable of subsisting ... at law are — (a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in position ...". Thus the 1925 Act makes a distinction between a legal estate and a legal interest. In Megarry, Law of Real Property (5th ed. 1975) of this subsection (2) (a) it is said: "This head includes both easements and it seems profits a prendre". Notwithstanding the somewhat cautious "it seems" (the 1925 Act is perhaps not clear), in my opinion a profit a prendre is not an estate but is no more than an interest. ~~This~~ ^{This} opinion ~~is~~ ^{accords} with regulation 24 of the Commons Registration (General) Regulations 1966 which expressly provide that claims to profits a prendre other than rights of commons may be noted in the Lands Section of the register, indicating I think that they are not to be mentioned in the Ownership Section.

For the above reasons I conclude that I have no jurisdiction to direct the registration of the ownership of sporting rights in the Ownership Section notwithstanding that they may be for an interest in fee simple; accordingly I refuse to consider whether the evidence offered at the hearing satisfactorily proves that there are any such rights owned by the Duchy over the Unit Land or any part of it.



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By the 1938 conveyance 5,438.108 acres of land described in Part II (headed "As to portions let") and 559.910 acres described in Part II (headed "As to portion in hand) of the Second Schedule are conveyed by detailed description and reference to a plan. No copy of this plan was produced, but Mr Purvis said that he had seen it and that it did not include the Unit Land. The parcels of the 1938 conveyance also included general words "forestal rights in or over the said lands and premises and all such of the same or the like rights (whether manorial or of any other nature) in or over the adjoining parts of the Forest of Bowland as immediately before the execution hereof where vested in the Vendors ...". Although these general words might be wide enough to include the Unit Land if I could otherwise be satisfied that the Vendors in 1938 owned the Unit Land, such words are not ~~in~~ evidence of the ownership of anybody.

In the absence of any other evidence as to the ownership of the Unit Land I am not satisfied that any person is the owner of the Unit Land or any part of it and it will therefore 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 15th — day of March — 1982

a. a. Baden Fuller

Commons Commissioner