



In the Matter of land at Haylot
Fell and Blanch Fell, Roeburndale

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.210 in the Register of Common Land maintained by the former West Riding 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 no person claimed to be the freehold owner of the land in question and no one claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Lancaster on 28 January 1986.

At the hearing Mr Gillibrand, solicitor of Oglethorpe, Sturton and Gillibrand of Lancaster represented Mr Anthony Fielden Mason-Hornby who claimed ownership of the land. Mr Mason-Hornby has no paper title to this land, which lies between his Mallowdale Estate on the east and a large moor belonging to the Duke of Westminster's Abbeystead Estate (CL.213). Until recently there was no fence along the western border of the land which was, however, marked by a line of cairns. It is significant that the parish boundary runs along the boundary of the unit land including it in the same parish as the Mallowdale Estate but in a different parish from CL.213.

Mr Mason-Hornby's claim is based on the facts that this land, adjacent to his land and included with it both by the ancient line of cairns and the parish boundary has always been treated as part of the Mallowdale Estate Land and, since at any rate 1923, has been the subject of acts of ownership by the owners and tenants of that estate. No one has during that period made any adverse claim to the land and the owner of the adjoining land has repudiated any such claim in the clearest way by fencing it off.

The acts of ownership relied upon were firstly that up until 5 or 6 years ago when the present tenant succeeded his father the unit land had been treated under the unwritten tenancy as part of Mallowdale farm and the tenant had kept a flock of 30 ewes heafed on the land. When the present tenant was given a written tenancy the unit land was not expressly included but that, I was told by Mr Challoner who has been agent of the estate since 1967, was because the land was registered as common land and he was unsure of its status.



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Both Mr Challoner and the present tenant, Mr Anthony Mickle, told me that, notwithstanding this, the land has in fact been treated as part of the tenancy and taken into account in fixing the rent and that the tenant has continued to keep a particular flock heafed on the land.

The other acts of ownership relied upon relate to shooting. Mr Ernest Harding who was gamekeeper to the Mallowdale Estate from 1923 to 1963 gave evidence that during the whole of that time he treated the unit land as part of the Estate and kept the cairns which marked the boundary in repair as and when this was needed. From time to time he warned persons carrying guns off the land. During the grouse-shooting season a number of drives were held. These were normally from west to east in which case the beaters would be lined up along the line of cairns as being the western boundary of the estate and would work eastwards from there. This procedure in later years was continued by Mr Barry Rowbottom keeper to the Estate since 1976 and Mr Anthony Mickle who has been responsible for organising the beaters. All witnesses stated that no one else was ever permitted to shoot on this land. Finally Mr Challoner stated that he had in recent years taken part in gull-shoots on the land to cull gulls for the Nature Conservancy.

While the mere hefting of sheep on open land does not in itself prove ownership, the evidence of acts of ownership, all of which I accept, is enough, in the circumstances of this case including the lie of the land and the absence of opposition, to convince me that Mr Anthony Fielden Mason-Hornby is the owner of the land, and I shall accordingly direct the Lancashire County Council, as registration authority, to register him as the owner of the land under section 8 (2) 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

10th

day of

February

1986

Peter Lanyon-Davis

Chief Commons Commissioner.