



COMMONS REGISTRATION ACT
1965

Reference No. 220/U/39

In the Matter of land known as Cowpe Lowe
in the former Urban District of Ramsbottom

DECISION

This reference relates to the question of the ownership of land known as Cowpe Lowe in the former Urban District of Ramsbottom being the land comprised in the Land Section of Register Unit No. CL.239 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 Mr Geoffrey Morton 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 inquiring into the question of the ownership of the land at Rawtenstall on 7th July 1987.

Mr Geoffrey Morton and his wife appeared by Mr Richard Haworth of Counsel, instructed by Mr J Birch of Messrs. Rushton, Ibbotson & Clay of Blackburn. The Lancashire County Council (the registration authority) was represented by Mrs Cunliffe, its registration officer.

Mr Haworth said that Mr and Mrs Morton were the owners of Lower Lench Farm and Rough Lee Farm (the later formerly known as the Manor House). These farms (which I shall call "the farms") are shown on the register map to the north-east of the unit land. They include the land shown on the register map as Lowe Side, which adjoins the northern boundary of the unit land for about one-third of its length at the eastern end.

The title deeds of the farms were at present at H M Land Registry. I was provided with a List of Documents sent to the Land Registry dated 2nd April 1987 made by Messrs. Rushton Ibbotson & Clay. No copies of any of these documents were available. It was not suggested that they included the unit land.

Mr Morton was sworn. He said that his great-grandfather George Ashworth became tenant of the farms in 1900. (It may be observed that the first document in the List of Documents is a Tenancy Agreement dated 4th March 1903 in favour of George Ashworth). He said that the tenancy included the unit land; that his great-grandfather remained the tenant until his death in 1920; and that at that time Cowpe Lowe was walled and fenced. His great-grandfather was responsible for the fencing, and the land was used for grazing sheep and cows.

Mr Morton said that his grandfather (also called George Ashworth) took over the farms in 1920, and carried on until 1967. He said that his mother was born in 1922, and that he himself started working on the farms in 1961, in his grandfather's time. His grandfather retired in 1967, when he himself took over. He has run the farms himself ever since, and has kept sheep and cows on the unit land.



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He said that until 1947 the walls of the unit land were kept up. The farms on the other side of the hill (i.e. to the south of the unit land) were tenanted until 1947. The Water Board then acquired these farms, and after 1949 the walls to the south corroded away. They no longer kept animals out. Mr Morton explained that it was not in his interest to keep these walls up, as he gained more grazing. There was nobody on the Water Board's land, and his animals go onto that land.

Mr Morton purchased the farms in February 1987: see document number 13 in the List of Documents, a Conveyance dated 23rd February 1987 in favour of Mr and Mrs G Morton. This was a Conveyance by Messrs. Ashworths, but I was told that these Ashworths were not connected with Mr Morton's family.

The Rights Section of the Register shows two effective Entries:-

- (i) the right of Peter Francis Hunt as owner of Middle Lench Farm to graze 50 sheep and 20 cattle over the whole of the register unit; and
- (ii) the right of Mr Morton himself as tenant of Lower Lench Farm to graze 150 sheep and 14 cattle over the part of the register unit north of the line A-B and over the whole of CL.94 and CL.99.

The part of the register unit lying south of the line A-B is a relatively small parcel extending from the south-westerly corner of the bulk of the register unit.

Mr Morton said that Mr Hunt died in about 1981, having previously sold his land, and that his rights had not been exercised since 1970. He said that Middle Lench Farm had plenty of other grazing land.

Mr Morton produced to me a copy of The Lonk Sheep Breeders' Association Flock Book for 1962. He drew my attention to the advertisement opposite page 13, which is headed "COWPE LOWE FLOCK of REGISTERED LONK SHEEP the property of George Ashworth, Rough Lee Farm....".

Mr Morton said that he had excluded other people's sheep from the unit land, many a time. These were odd isolated sheep, not strays; that the part wall and part fence to the north and west of the unit land excluded everyone else's animals; and that other people's cattle had never come onto the unit land. He said that he didn't stop walkers; but that apart from the southern boundary wall not being sheep-proof, the unit land was still enclosed, and that he maintained the fencing on the western boundary and the northern boundary as far as his land.

On this evidence Mr Haworth claimed that his clients showed a possessory title to the unit land. I asked him whether he wished to cite any authority on this topic, but he did not wish to do so.

Claims to a possessory title, either by adverse possession under the limitation acts or otherwise, are never easy to establish. The difficulties are even greater where the land claimed is common land, over which the claimant already has common rights. The enclosure of grazing land may have either (or both) of two purposes: (i) to keep one's own animals in; or (ii) to keep other people's animals out. It does not seem to me that Mr Morton or his grandfather and



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great-grandfather before him, whilst tenants of the farms, ever did anything to assert rights as owners of the freehold of the unit land. All the acts which they did were equally consistent with their having grazing rights thereover- the rights which are now protected by registration in the rights section of the register. The mere fact that Mr Morton's grandfather called his flock of lonks "The Cowpe Lowe Flock" cannot in my view amount to an assertion of a right of ownership over Cowpe Lowe. As the tenant of grazing rights over Cowpe Lowe he was equally justified in using that name.

On this evidence I am not satisfied that Mr and Mrs Geoffrey Morton are the owners or that any other person is the owner of the land 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

11th

day of

August

1987

Commons Commissioner