



In the Matter of Beldon Peat Moor,
Carperby-cum-Thoresby, North Yorkshire (No. 1).

DECISION

This dispute relates to the registration at Entry No 1 in the Land section of Register Unit No CL 230 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and is occasioned by Objection No 0244 made by Mr J U Machell and Sir Henry Lawson-Tancred and noted in the Register on 4 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Richmond on 9 May 1978. The hearing was attended by Mr J S Huntington, solicitor, on behalf of the Trustees of Philip Swale's Trust of the Society of Friends, the applicants for the registrations at Entry Nos 3, 4 and 7 in the Rights Section of the Register Unit, and the Trustees of Francis Smithson's Trust of the Society of Friends, the applicants for the registrations at Entry Nos 5, 6 and 8 in the Rights Section, and by Mr J H N Towers, solicitor on behalf of the Objectors. There was no appearance by or on behalf of Mr A Dinsdale, the applicant for the registration at Entry No 1, or Mr W M Marshall, the applicant for the registration at Entry No 2.

Mr Huntington relied upon the Carperby Inclosure Award made 27 August 1819 under the Carperby and Aisgarth Inclosure Act of 1809 (49 Geo. III, c.76 (private)), by which there were allotted 100 acres part and parcel of an allotment No 90 upon the Common awarded to Lord Bolton to all the owners and occupiers of messuages, lands, tenements and hereditaments within the township of Carperby for the time being for the purpose of getting peats and turves and ling for their own use and consumption only within the township of Carperby.

Mr Towers admitted that the applicants were entitled at the time of registration to the rights set out in the Award, but he did not admit that the land comprised in the Register Unit was the area of 100 acres thereby allotted.

It is stated in the Award that the allotted area is marked out and delineated on one of the maps or plans annexed to the Award, but the terms of the Award are known to the parties only from a copy to which no map or plan is annexed.

The applications for the registrations were made by Mr A J Rowntree, the Secretary of both bodies of Trustees. Unfortunately Mr Rowntree has since died, so it is not known how he determined which land to include in the applications. It was certainly not by reference to any physical boundaries, for there are none. Nor did it depend upon continuous user from which it might have been inferred that peat had been cut on the same land from the time of the award, for no peat has been dug during the 30 years that Mr T Waite has been the owners' agent. The only evidence of peat cutting within living memory was given by Mr J F Percival, who remembered his father and at least two neighbours cutting peat in 1918, when he was a boy. Mr Percival said that this was done on the land comprised in the Register Unit.

The words "Beldon Peat Moor" appear on the Ordnance Survey Map about the middle of the land comprised in the Register Unit, but there is nothing on the map to indicate the extent of the land to which those words relate.



Mr Waite said that the land comprised in the Register Unit consists of rocky outcrop and peat bog which in parts would be extremely dangerous to cross. He further said that there is deep peat suitable for cutting in the adjoining land to the west.

The land comprised in the Register Unit has an area of 100 acres. It is unfortunate that Mr Rowntree left no record of the evidence which led him to identify it as the area of 100 acres referred to in the Award. I find it impossible to believe that he selected the area at random. While it is not clear beyond a reasonable doubt, it appears to me on a balance of probabilities that Mr Rowntree had access to the map referred to in the Award and that the area of 100 acres comprised in the Register Unit is the area of 100 acres allotted by the Award as a peat moor.

For these reasons I confirm the registration.

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

9th

day of

June

1978

CHIEF COMMONS COMMISSIONER