



COMMONS REGISTRATION ACT 1965

Reference Nos 45/U/288
45/U/294
45/U/295
45/U/298
45/U/299
45/U/301

In the Matter of Brows Pasture (2 Pieces),
Brocket Holes Pasture (2 pieces), Brunscar
High Fell and Winterscales Pasture, all in
Ingleton, Craven District, West Yorkshire

DECISION

These references relate to the question of the ownership of the lands known as Brows Pasture (2 pieces), Brocket Holes Pasture (2 pieces), Brunscar High Fell and Winterscales Pasture, all in Ingleton, Craven District, being the lands comprised in the Land Sections of Register Unit Nos CL. 368, CL. 437, CL. 466, CL. 529, CL. 530 and CL. 668 in the Register of Common Land maintained by the West Yorkshire County Council (the registrations are summarised in the First Schedule hereto) of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon publication of notice of these references, Mr E T Bailey claimed ownership of Brows Pasture (CL. 466 and CL. 668) of Brunscar High Fell (CL. 529) and Brocket Holes Pasture (CL. 437 and CL. 530). No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of these lands at Skipton on 24 March 1976. At the hearing (1) Mr E T Bailey was represented by Mr C Reeder solicitor of Charlesworth Wood & Brown, Solicitors of Skipton as agent for Sampson Wade & Co Solicitors of Bradford, (2) Mr Brian E Capstick QC and Miss Brenda Capstick were represented by Mr G I Holmes chartered surveyor of Turnbull & Parkinson Chartered Surveyors of Chester-le-Street, (3) Mrs L B Redhead, was represented by her son Mr A D Redhead, and both (4) Mr W B Booth and (5) Mr James Handley attended in person. All those represented or attending are persons on whose application Entries have been made in the Rights Sections as mentioned in the First Schedule hereto (except Mr and Miss Capstick who are the personal representatives of the applicant Mr N E Capstick). Miss B Graham said she had a message from Ingleton Parish Council that they did not claim ownership.

Mr Reeder in the course of his evidence produced the Particulars of the Sale by auction on 27 September 1955 of an estate of 2,755 acres in 16 lots by order of the Trustees of E L Hartley deceased, and also a conveyance dated 29 March 1957 by R G Bail & Co Limited to Mr E T Bailey of lands said to be lots 5, 6, 8, 10, 11, 12 and 9 as described in the said 1955 Particulars. I have quoted or summarised in the First Schedule hereto the words in the 1955 Particulars relating to gaits and in the Second Schedule hereto the relevant words in the parcels of the 1957 conveyance.





Mr Reeder said (in effect):- He was primarily concerned to represent Mr Bailey who owned about 420 acres of nearby land, being part of what was the "Hartley Estate"; his gaits are over Brocket Holes (CL. 437 and CL. 550), Browns Pasture (CL. 466 and CL. 668) and Brunscar (CL. 529). Nobody had ever interrupted the use of the lands by the gait-owners in exercise of their rights; they had exercised sporting rights, and dealt with the land themselves, "so the gait owners have always assumed that they also were the owners of the soil".

Mr Redhead in the course of his evidence said (in effect):- He attended the 1955 Sale; Chapel House Farm (lot 13) was purchased by the tenant's uncle, who 2 years later sold it to his mother (Mrs Redhead). She was concerned with Browns Pasture (CL. 466 and CL. 668); her failure to register any right over the CL. 668 land was a mistake; these lands are all one field, walled in. Mr T Newhouse who was tenant in 1955 is still tenant; however he, Mr Redhead, visits the Farm almost daily because he has horses in a stable there. Nobody other than the purchasers of rights at the 1955 Sale have exercised rights over Browns Pasture; the only graziers were his mother's tenant, Mr Newhouse and Mr Bailey's tenants of East Chapel Farm, and Ellerbeck Farm; the grazing is by sheep, there is too much bracken for it to be safe to graze cattle. The tenants exercise sporting rights, that is they keep down the rabbits; neither he nor his mother (she is now aged 83 years) had shot over Browns Pasture. The farms referred at the hearing are mostly sheep, but some may have a few cattle.

Mr Holmes in the course of his evidence explained the interest of Mr N E E Capstick (he died in 1974) under the 1955 Sale, at which he purchased lots 3, 4, 7 and 16; only Broadrake (lot 7) had gaits. Brocket Holes is (or was) walled (wall at the top is in places down). The paragraph in the conveyance to Mr Capstick relating to gaits had been read to him over the telephone as follows: "All such beast gaites or sheep gaites or other the rights and interest appertaining and in any way belonging to the said hereditaments and premises in or upon such pasture called Whernside and Bracket Hole or otherwise known as Bracken Hole and High Fell respectively".

Mr Booth who is now 82 years old started farming in Nether Lodge in 1930 and went to Winterscales and Ive Scar in 1944 in the course of his evidence said (in effect):- He is concerned in Winterscales (CL. 368) Mr Handley being the only other person concerned, and also with Brocket Holes (CL. 437 and CL. 530); he confirmed that the gaits described in the Third Schedule of the 1957 conveyance had (as marginally noted in pencil on that conveyance) been conveyed by deed of exchange dated 18 April 1958 to himself and to Miss A Booth (his daughter deceased). He and Mr J Handley were concerned with 3 farms: Five Scar, Winterscales and Gunnerthwaite which were "mixed up". As to ownership of Winterscales pasture and Brocket Holes (when questioned by Mr Reeder) he couldn't say anything about it.

Mr Handley who was concerned only with Winterscales (CL. 368) said he was agreeable that my decision about this should be the same as in the other cases.

The substantial questions raised by these references are: (1) whether the evidence summarised above and in the Second and Third Schedules hereto show that the gait-owners are also owners as tenants in common in shares proportional to their gaits or otherwise of the soil of the lands; and (2) if the evidence does not show this, whether I ought to presume from the fact that these lands are (as I am satisfied that they are) gaited pastures, that the gait owners are also the owners of the soil.





I should say parenthetically that because under the 1965 Act I am concerned only with ownership of the legal estate in fee simple, see section 22 and because under the Law of Property Act 1925 land cannot after 1925 be held for such an estate in common it would follow that if I found the gait owners were tenants in common beneficially, I would have to direct the registration under the 1965 Act as owner of some person (probably the Public Trustee) as trustee for them, see my decision re Longton (Lancashire) dated 15 July 1974 reference 20/U/81, re Ireshope (Durham) dated 10 October 1974 reference 11/U/19, re Bethacar (Cumbria) dated 23 July 1975 reference 20/U/94, re Whipsnade (Bedford) dated 21 November 1975 reference 201/D/10 and re Inchfield (West Yorks) dated 27 May 1976 reference 45/U/194. But this is a technicality which does not prevent me from considering the questions mentioned in the preceding paragraph.

As to the evidence, and to Mr Reeder's contention that I should conclude that the gait owners always assumed themselves to be the owners of the soil:- The 1925 Act affects (as far as now relevant) only the legal estate in land held in undivided shares, so I accept that there is no reason in law why the owners of a gaited pasture should not (as claimed by Mr Reeder) own the soil beneficially as tenants in common; and as appears from my said decisions, I have in other cases concluded that such ownership had been proved. The registrations under the 1965 Act correspond with those mentioned in the 1955 Particulars and the 1957 conveyance; whether there were ever any other gait owners I do not know. But whatever the Hartley Trustees and R G Bailey & Co Limited or their advisers may have known or thought about the existence of other gait owners, neither the 1955 Particulars nor the 1957 conveyance are prepared on the assumption that the owners of the gait owners are also owners of the soil. Indeed if the only gait owners over these lands known to the Hartley Trustees or their advisers were those which they themselves owned and if they and Mr Hartley before them had always assumed that the owners of the gait owners also owned the soil, there would be no reason why these pastures should not have been sold and conveyed for an estate in fee simple in possession in the ordinary way. The oral evidence before me in my opinion does not show that any of those concerned ever (at any rate before the 1965 Act) thought at all about ownership of the soil.

In law they might, without having thought about ownership, have done acts under which they could claim a possessory title. But a possessory title by the gait owners to the soil of a gaited pasture cannot I think be established by acts which might if they were not gait owners be acts of ownership, unless such acts cannot be referred to ownership of the gait owners, see *Rigg v Lonsdale* (1857) 1 H&N 923 at page 936. The shooting of rabbits as described by Mr Redhead (no one else gave evidence of these acts) in my view falls short of establishing any such title.

I conclude therefore that the ownership claim is not established by evidence. In my opinion in law there is no presumption that the soil of a gaited pasture is owned by the owners of the gait owners. I can find no mention of any such presumption in any book on the law of commons. The 1958 Royal Commission on common land if they had known of any such presumption would I think have mentioned it in connection with their recommendation that Parliament should provide for the ownership of common land with no known owner. If there had been any such presumption it would I think have been mentioned by the Judges who considered *Rigg v Lonsdale* supra.

For the above reasons I am not satisfied that any person is the owner of any of these lands, and they 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.

FIRST SCHEDULE
(The Registrations)

CL. 368 Winterscales Pasture (45/U/301)

Land Section:- Area 266.757 hectares (659.156 acres)

Rights Entries (Entry Nos, names of applicants, summary of rights registered):-

- (1) J Handley & E A Hodgson: 40 sheep: attached ... (register blank)
- (2) W S Booth: 277 sheep gaits and 30 beasts: attached...held in gross
- (3) J Handley: 52 sheep gaits: attached Gunnerfleet

CL. 437 Brocket Holes Pasture (greater part):(45/U/299)

CL. 530 Ditto (smaller part):(45/U/294)

Land Section (CL. 437):- Area 30.804 hectares (76.11 acres)

Land Section (CL. 530):- Area 5.185 hectares (12.8 acres)

Rights Entries (Entry Nos, names of applicants, summary of rights registered):-

- (1) and (-):- W S Booth: 32 sheep gaits: attached ... held in gross
- (2) and (1):- N E Capstick: 88 $\frac{3}{4}$ sheep gaits: attached Broadrake Farm
- (6) and (5) E T Bailey:- turbary, cut rushes, and 40 $\frac{1}{8}$ sheep gaits: attached Brunscar Moss
- (7) and (6) A Brennand and M Brennand:- turbary, cut rushes and 13 sheep gaits: attached Brunscar Hall Farm

Note: Last two Entries replace former Entry Nos (3) and (2) of turbary, cut rushes, and 53 $\frac{1}{8}$ sheep gaits registered as application of E T Bailey attached to Brunscar Hill Farm





CL. 466 Brows Pasture (Lower Part) : (45/U/298)

CL. 668 Ditto (Upper Part) : (45/U/288)

CL. 466 Land Section:- Area 12.636 hectares (31.2 acres)

CL. 668 Land Section:- Area 4.909 hectares (12.12 acres)

Rights Section Entries (Entry No and names of applicants, summary of rights registered):

- (1) and (-):- L B Redhead : 4 beast gaits (1 beast gait = 5 sheep gaits) : attached Chapel House
- (2) and (1):- E T Bailey : 10 beast gaits, cut rushes, turbary, gather surface stone : attached Ellerbeck Farm
- (3) and (2):- E T Bailey : 17 sheep gaits, 4 beast gaits, cut rushes, cut turf and gather stone : attached East Chapel House Farm

CL. 529 Brunscar High Fell : (45/U/295)

Land Section: Area 64.361 hectares (135.46 acres)

Rights Section Entries (Number and Names of applicants, summary of rights registered):-

- (1) N E Capstick: 150 sheep (?gaits) : attached Broadrake Farm
- (3) E T Bailey (noted? informally, now A & N Brennand, Ellerbeck Farm) : turbary, cut rushes and 74 sheep gaits : attached Brunscar Farm
- (6) E T Bailey: turbary, cut rushes, and 60 sheep gaits : attached Brunscar Moss
- (7) A Brennand and M Brennand: turbary, cut rushes, and 13 sheep gaits : attached Brunscar Hall Farm

Note: Last two Entries replace former Entry No (2) of turbary, cut rushes, and 73 sheep gaits registered on application of E T Bailey attached to Brunscar Hall Farm





SECOND SCHEDULE
(Hartley Estate : Auction Particulars
of Sale on 27 September 1955)

| Lot No. and Name of Farm and area in acres r.p. | Whernside & Brunscar High Fell or Whernside | Bracket Hole | Scales Moor | Brows Pasture | Ingleborough Fells | Root of Title |
|--|--|-----------------------------------|-------------------|-------------------|-----------------------|---|
| | CL.529 | CL.437 CL.530 | - | CL.466 CL.668 | - | |
| (5) Brunscar and Hodge Hill Farm 177.3.2. | 74 sheep gaits on W & BHF | - | - | - | - | Conveyance 15 January 1908 |
| (6) Brunscar Hall Farm and land: 202.1.2. | common right on Whernside | 53½ sheep gaits | - | - | - | Conveyance dated 12 November 1924 |
| (7) Broadrake Farm: 72.0.3. | 30 (?gaits) on High Fell | 17½(cattle and sheep) gaits | - | - | - | Conveyance dated 8 November 1910 part and exchange dated 1 July 1947 other part |
| (8) Scar Top Farm about 70 acres | - | 2 cattle gaits | - | - | - | Conveyance dated 31 August 1939 |
| (9) Ellerbeck Farm: 179.0.38. | - | - | 40 sheep gaits | - | - | with Lot (3) conveyance dated 10 August 1920 |
| (10) East Chapel House Farm and Low Scales: 53.1.2. | - | - | 60 sheep gaits | 4 beast gaits | - | With Lot (13) conveyance dated 6 January 1908 |
| (11) Gill Head Farm 52.2.20. | - | - | 17 sheep gaits | 15 sheep gaits | - | With part of Lot (14), conveyance dated 21 December 1929 |
| (12) High Scales Farm: 18.3.35. Middle Scales Farm 31.2.17. | - | - | 30 sheep gaits | 15 sheep gaits | - | Conveyance dated 17 December 1919 part and 31 Decemb 1929 other part |
| (13) West Chapel House Farm: 125.1.27. | - | - | - | 20 sheep gaits | Unlimited | See Lot (10) above |



THIRD SCHEDULE
(Parcels of conveyance dated 29 March 1957
R G Bailey & Co Ltd to E T Bailey)

First Schedule of conveyance (said to be lot 5):-

2 Farms now occupied as one : Brunscar (otherwise Brunscar and Hodge Hole) : 177a.3r.22p.

"Together with the seventy four sheep gaits on "hernside or Brunscar High Fell and all other rights of common or otherwise enjoyed in connection with the said premises Subject to the rights preserved to the Lord of the Manor of Newby by the Law of Property Act 1922 and not extinguished by a compensation agreement affecting the same dated 27 March 1933 and made between Sidney James Farrar and Brian and Harold Mason Farrar (1) and John Henry Hartley (2)"

Second Schedule of conveyance (said to be lot 6):-

Farm called the northeast part of Brunscar : 202a.1r.2p.

"Together with fifty three sheep gaits and one-eighth of another sheep gait on Bracket Hole with common right on Whernside ... and Subject also to the rights preserved to the Lord of the Manor of Newby ... (as above ..."

Third Schedule of conveyance (said to be lot 8):-

Message ... with barns ... and enclosures being Homefield, Far End, Great Bank, Little Bank, the Top Scar Pasture and the New Field ... : about 70 acres

AND ALSO ALL THOSE two beast gaits or cattle gaits, herbage, grazing and bit of mouth for two full-grown beasts to go, graze, feed and pasture in or upon and throughout all that open stinted pasture called Brocket Hole ... Subject to the rights of the Lord of the Manor of Newby preserved by a compensation agreement affecting the same dated 30 December 1935 and made between Sidney James Farrar (1) and John Leonard Clark and John Downham Kirkbright (2)

Fourth Schedule of conveyance (said to be lot 10):-

Farm known as East Chapel House with lands called Scales Moor : 53a. 1r.2p.

"Together with sixty sheep gaits on Scales Moor and four beast gaits or the right of turning 4 beasts on Brows stinted pasture Subject to the rights preserved to the Lords of the Manor of Twistleton and Ingleton by the Law of Property Act 1922 and not extinguished by any compensation agreement affecting the same"

Fifth Schedule of conveyance (said to be lot 11):-

Gill Head Farm:- 52a.2r.20p.

"Together with seventeen sheep gaits on Scales Moor and fifteen sheep gaits on Brows Pasture and Subject as to such part thereof as was formerly customary hold of the Manor of Newby to the rights preserved to the Lord of the Manor by the Law of Property Act 1922 and not extinguished by any compensation agreement affecting the same and as to such part as was formerly within the Manor of Twistleton and Ellerbeck to the reservations and conditions contained in a deed of enfranchisement



dated 20th day of December One thousand seven hundred and eighty-seven and made between John Button and John Oddy of the one part and William Metcalfe of the other part so far as the same affect the property hereby conveyed and remain to be observed and performed"

Sixth Schedule of conveyance (said to be lot 12):-

Farm known as High Scales : 18a. 3r.35p.

"Together with thirty sheep gaits on Scales Moor and fifteen sheep gaits on Brows Pasture"

Secondly Farm called Middle Scale (31.2.17)

"Together with two beast gaits or herbage grassings or feeding for two full made beasts in or upon throughout all that stinted pasture called the Brows (subject to the payment of 10p annually for each of the said two beast gaits to the owner of Chapel House Estate) and a right of pasturage to the extent of 5 1/16th cattle gaits or 20 1/4 white-faced sheep gaits or 25.3125 black-faced sheep gaits in or upon or throughout a certain other pasture called Scales Moor ... together also with the right of pasturage to the extent of 3 14/16ths cattle gaits or 15 2/14th white-faced sheep gaits or 19.375 black-faced sheep gaits in or upon and throughout the said pasture called Scales Moor ... Subject as to such parts as were formerly customary of the Manor of Tiwstleton and Ellerbeck and as to such parts as were formerly customary hold of the Manor of Ingleton to the rights preserved to the Lords of the said Manors by the Law of Property Act 1925 and not extinguished by any compensation agreement or deed of enfranchisement affecting the same"

Seventh Schedule of conveyance (said to be lot 9):-

Ellerbeck Farm : 179a.Or.38p.

(No gaits)

Dated this 15th day of November — 1976

a. a. Baden Fuller

Commons Commissioner