



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/318

In the Matter of Burn Moor,
Bentham, Craven District,
North Yorkshire

DECISION

This reference relates to the question of the ownership of five parts of the land known as Burn Moor in Bentham, Craven District and being the land comprised in the Land Section of Register Unit No. CL136 in the Register of Common Land maintained by the North Yorkshire (formerly West Riding) County Council of which said five parts no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference: (a) Major and the Hon Mrs R H F Cowen in a letter dated 19 November 1984 from their solicitor claimed ownership of one (that near Flannagill) of the said five parts; (b) information about their ownership was given by Edwin Thompson & Co, Chartered Surveyors of Keswick; and (c) Solicitors for Bentham Town Council in a letter dated 24 January 1985 said (in effect), that the Council "as a matter of practical convenience" supported the ownership of Major and Mrs Cowen of these "odd bits", they being (as now registered) the owners of all the remainder of the said land. No other persons claimed to be the freehold owner of any of the said five parts or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the said five parts at Skipton on 5 February 1985. At the hearing: (1) Major R F H and the Hon Mrs S M Cowen were represented by Mr R M N Gillibrand solicitor of Oglethorpe Sturton & Gillibrand, Solicitors of Bentham as agents for Hunters, Solicitors of Lincolns Inn London; (2) Mr John Nowell and Mrs Mabel Nowell of Oakheadmire Farm were represented by Mrs E Hogarth solicitor with Derek M Jordan Solicitors of Settle; and (3) Mrs Zillah Jackson of Creag Mhor was also represented by Mrs E Hogarth.

The land ("the Unit Land") in this Register Unit contains about 1,356½ acres. There are 41 registrations in the Rights Section. In the Ownership Section Rosslyn Fairfax Huxley Cowen and Shelagh Mary Cowen are registered as owners of all the Unit Land except the said five parts all of which adjoin its northern boundary and are comparatively very small; as set out in the First Schedule hereto I herein call the said five parts (from west to east): (1) the Oakheadmire Piece, (2) the Scarfes Lane Piece, (3) the Flannagill Piece, (4) the Lane Head Piece and (5) the Gill Beck Piece.



Mr R N N Gillibrand in the course of his oral evidence produced the documents specified in Part I of the Second Schedule hereto, pointing out that the Flannagill Piece is a road edge within the brown on the 1962 conveyance plan, that the Lane Head Piece although not within the 1962 brown is within the brown on the 1929 conveyance plan, and that the Scarfes Lane Piece is not within either the 1962 or the 1929 brown; he nevertheless submitted that the evidence of Mr Moss read with the conveyances showed Major and Mrs Cowen to be the owners of all three.

Mr Richard Anthony Moss of Edwin Thompson & Co who had for the last 14 years for Major and Mrs Cowen managed their Burn Moor Estate, in the course of his oral evidence said (in effect):- The Fell wall is the north side of the Lane Head Piece; between the south side of the Piece and the rest of the Moor there is no physical boundary; across the Piece there is a tract to a small dwelling (a cottage); he had always considered the Piece to be part of the Estate owned by Major and Mrs Cowen. The Flannagill Piece is on two sides (north and east) bounded by the Fell wall and on its other side (south) open to the rest of the Moor. The Scarfes Lane Piece is a green lane giving access to the Unit Land from the public road (Keasden to Wray); along the Piece there is a tract but it appears to be a drove road for access. The Estate makes no claim either to the Oakheadmire Piece or to the Gill Beck Piece, he never considered these Pieces to be part of The Burn Moor; they are fields part of the adjoining farms (Oakheadmire and Gruskham Gill Beck), he thought.

In support of the claim that Mr and Mrs Nowell to the Oakheadmire Piece, Mrs Hogarth produced the conveyances specified in Part II of the Second Schedule hereto. She identified the Oakheadmire Piece with OS No 1103 containing 1.194 acres and described in the 1961 conveyance schedule as "meadow or pasture".

In support of the claim of Mrs Z Jackson to the Gill Beck Piece, Mrs Hogarth produced the assent specified in Part III of the Second Schedule hereto. She identified the Gill Beck Piece with OS No 1299 containing 0.698 acres mentioned in the 1973 assent as included in the edged red on the next plan.

On the evidence above summarised I conclude that the Scarfes Lane Piece, the Flannagill Piece and the Lane Head Piece were in 1929 within the words "the Moor or Waste called Burn Moor (Mewith Part)" used in the 1929 conveyance and within the like words in the 1962 conveyance, and that the plans annexed so far as they do not include these pieces may be rejected in accordance with the rules of law, conveniently summarised under the heading "Falsa demonstratio non nocet"; so I am satisfied that Major and Mrs Cowen are the owners of these three pieces.

On the documents produced by Mrs Hogarth I am also satisfied that Mr and Mrs Nowell and Mrs Z Jackson are respectively the owners of the Oakheadmire Piece and the Gill Beck Piece. The Unit Land is in the Register described as:- The Piece of land ... known as Burn Moor ... as marked with a green verge line ...". The evidence above summarised suggests that these two Pieces although within the green verge line are not part of the land known as Burn



Moor; so the question does or may arise as to whether under the said rules of law they are within the registration; I have no jurisdiction to decide this question but I shall so word my direction to the County Council so as to make it applicable whatever may be the correct answer to it.

Upon the above considerations I shall in pursuance of section 8(2) of the 1965 Act direct that Devon County Council as registration authority to register (a) Major Rosslyn Fairfax Huxley Cowen and Mrs Shelagh Mary Cowen of Shawdon Hall, Glanton, Alnwick, Northumberland as the owners of the pieces of land in the First Schedule hereto called the Scarfes Lane Piece, the Flannagill Piece and the Lane Head Piece being parts of the Unit Land of which no person is registered under section 4 of the 1965 Act as the owner; (b) Mr John Nowell and Mrs Mabel Nowell of Oakheadmire Farm, Mewith, Bentham, North Yorkshire as owners of the Piece of land in the First Schedule hereto called the Oakheadmire Piece or the part thereof if any or so much thereof if any which is part of the Unit Land and of which no person is registered as aforesaid as owner; (c) Mrs Zillah Jackson of Creag Moor, Robins Lane, Bentham, North Yorkshire as the owner of the piece of land in the First Schedule hereto called the Gill Beck Piece or so much thereof if it is part of the Unit Land and of which no person is registered as aforesaid as owner.

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
(Definitions)

In this decision:-

(1) The Oakheadmire Piece means that part of the Unit Land which is the most westerly of the five parts which are on the Register map marked as within the green verge line and of which no person is under section 4 of the 1965 Act registered as owner and all other if any of the land which is on the OS map 1900 edition marked No. 113 containing 1.194 acres and which is or may be part of the Unit Land.

(2), (3) and (4) The Scarfes Lane Piece, the Flannagill Piece and the Lane Head Piece means the three other of the parts (in order from west to east) of the Unit Land of which no person is so registered as owner, other than the Gill Beck Piece hereinafter defined.

(5) The Gill Beck Piece means that part of the Unit Land is the most easterly of the said five parts and all other if any land which is on the said OS map marked No. 1299 as containing 0.698 acres and which is or may be part of the Unit Land.



SECOND SCHEDULE
(Documents produced)

Part I: on behalf of Major and Mrs Cowen

- RMNG/1 -- Copy map showing coloured purple the five "unclaimed" parts
- RMNG/2 1 May 1929 Conveyance by Henry Cyril Warneford Foster to James Marsland Tankard, William Whitehead and Norman Whitehead of "... the Manor Waste called Burn Moor (Mewith portion) ... containing (1325 acres) ... for purposes of identification only ... plan annexed hereto and thereon coloured brown ..."
- RMNG/3 4 September 1946 Conveyance and assignment by J M Tankard, W Whitehead and N Whitehead to Richard Leslie Brown of the said premises (Burn Moor etc), by reference to the said 1929 conveyance plan.
- RMNG/4 21 December 1960 Conveyance by R L Brown to R F H Cowen and S M Cowen of "the moor or waste called Burn Moor (Mewith portion) ... external boundaries ... delineated on plan annexed hereto and thereon edged brown ..."

Part II: on behalf of Mr and Mrs M Nowell

- N/1 13 November 1961 Conveyance by William Willcock as surviving executor of William Willcock who died 14 April 1925 to Mr J and Mrs M Nowell of Oakheadmire Farm containing 60.103 acres described in the Schedule and delineated on the plan annexed and thereon edged red.

Part III: on behalf of Mrs Z Jackson

- J/1 17 April 1973 Assent by Midland Bank Trust Company Limited as the surviving executor of John Stephen Sedgwick who died 14 May 1958 to the vesting in Mrs Zillah Jackson of house lands known as Gruskham Gill Beck and Cock Robin containing 35.9 acres described with OS Nos delineated on the plan and thereon edged red.

Dated this 6th day of March 1985

a. a. Barber Fuller

Commons Commissioner

