



(3) The fact that the grazing rights are exercisable only for six months in the year, which he said showed that there must be some other owner.

Mr Milner also said that the Parish Council repaired seats on the Green and referred me to various minutes of Parish Council meetings referring to matters (eg. the cleaning of ponds and the planting of trees) affecting the Green and involving action by the Parish Council.

In my opinion these factors and matters are insufficient to establish the ownership claimed by the Parish Council, and I do not accept their claim.

(2) The Cowgate Owners Claim

Mr Plews gave evidence in the form of a written statement which he confirmed on oath and on which he was cross-examined. He said that the records showed that in the last century there were meetings of the cowgate owners, which elected pasture masters and a pinder: that payments were made to men to collect stones, destroy thistles and clean out ponds and levies were made on the graziers to defray the cost: that from 1859 onwards the rents of cottages on the Green were collected by the pasture master. All this is borne out by the entries in the Flaxton Green Minute book which cover the period 1840 to 1981: this Minute book is in two volumes which were produced by Mr Plews and which I have perused. I refer below to entries in the Minute book which are in my view, of some significance.

In his statement Mr Plews went on to refer to various activities in more recent years of the cattle gate owners or in which they have participated in connection with the Green, which included allowing the use of a cricket pitch and of travelling fairs on payment, summer fetes, auction sales and hunt meets, the installation in 1946 of a water trough for the animals and the construction by the County Council but partly at the expense of the graziers of a cattle grid across the road. In cross-examination he said that some of the grazing rights had been sold or let and that he and a Mr Smedley were now owners or tenants of all the grazing rights and the only persons who put cows on the Green.

Mr Plews formulated the claim he was making in the terms that the owners from time to time of the rights are the owners of the land. This, as a matter of law, is a tenable proposition: some older cases show that in some parts of the country there did exist a form of ownership combining ownership of grazing rights over the whole area of the common with ownership of a share of the common land itself, the extent of the grazing rights and the size of the share being a proportion of the total number of the grazing rights, described as cattlegates or stints: (see the Report of the Royal Commission on Common Land 1955-1958 App. III paras 20 and 66, Halsbury's Laws of England 4th edn. Vol 6 para 522 and the cases in note 4). Mr Plews's claim can I think be more precisely formulated as a claim by the cattlegates owners to the ownership of the Green in undivided shares, each share being measured by the proportion borne by the number of his cattle gates to their total number.

In any case where a claim to such combined ownership is made, its success must depend on the evidence adduced in support of the claim. Grazing rights are not uncommonly described as cattlegates and often that is all that the word signifies: whether in a particular case it connotes also ownership of the common land itself depends on the relevant facts of that case and those facts depend on the evidence. The various activities mentioned by Mr Plews, while consistent with ownership of



In the Matter of Portions of land known as
Flaxton Village Green and Common Land,
Ryedale D

C 34

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL 54 in the Register of Common Land maintained by the North Yorkshire 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 claims to ownership of the land in question ("the Unit land") were made by (1) Mr H Plews on behalf of the Cowgate owners (2) Flaxton Parish Council.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Malton on 26 April 1982.

At the hearing Mr Plews appeared in person, and the Parish Council was represented by its Vice-Chairman, Mr C B Milner.

From the Register map it appears that the Unit land consists of some smallish areas of land including the Green, and the verges of lanes leading to these areas for some considerable distance around. The registrations in the Land Section and of grazing rights in the Rights Section became final in 1975: there are 19 rights holders registered, the aggregate number of animals entitled to graze being $31\frac{1}{2}$ cows. In each case the right is registered as attached to land in the parish of Flaxton and no question arises as to the existence of those rights.

This inquiry is as to the ownership of the Unit land, who is the owner to-day? A considerable part of the evidence and submissions on the part of each claimant body was directed to its own suitability to have ownership, and through ownership, administrative control, of the Unit land; and, on the part of the Parish Council, to the unsuitability of the Cowgate owners to have ownership. The question of suitability is irrelevant to this inquiry and I express no views on it: the inquiry is to ascertain, if possible, who is now the owner: this depends on the effect of the evidence as to ownership adduced, and I have no discretion to vest the ownership in any person simply on the grounds of suitability, or otherwise than in accordance with my assessment of the evidence, as to ownership.

(1) The Parish Council's Claim

Mr Milner for the Parish Council, based its claim to ownership on three factors:

- (1) An entry in the parish register of Bossall towards the end of the 17th century headed "memorandum of some particulars taken out of a book kept by Marmaduke Pool for the use and benefit of the fresholders of Flaxton" and which included the statement "all common gates belonging to the town shall be made equally at the common charge of the whole town".
- (2) The fact (as he stated in evidence) that there are two wells situated in the middle area of the Unit land which were used as a supply of drinking water by local people until the 1930s, and had been cleaned by the Parish Council, but are now sealed.



the land itself can, in my view, be attributed to the maintenance and protection of the rights and interests of the holders of grazing rights and are not necessarily referable to some further interest as owners of the land.

As I have said, the Minute Book covers the period 1840 to 1981, the first meeting in 1840 being described as a Vestry Meeting, and at this a Pasture Master was appointed and Rules for the Green were adopted: the Minutes of this meeting were signed by 23 persons described as 'proprietors and occupiers of the Green'. Subsequent meetings were held annually (there is a gap between 1949 and 1970) at which the Pasture Master's Accounts, copies of which appear in the Minute Book, were approved. These Meetings were variously described in the Minutes, sometimes simply as 'Meeting', sometimes as Meetings of 'Owners and Occupiers of the Green', of 'Green Owners' or 'Green holders' or 'Green Gait Owners and Occupiers', and in 1974-6 as the 'Freeholders and Parishioners'. It is not possible to be certain but I think it probable that the Meetings were for the most part Meetings of the Cowgate Owners, and the items dealt with in the accounts seem referable largely to their activities and payments by them or for their purposes: even so I cannot derive from this any decisive indication of ownership of the Green itself, though it is to be observed that the receipt of the Cottage rents appears in the accounts until 1937. Receipt of rents from tenants does indicate ownership of the property in the recipient: here it appears that the rents were collected by the Pasture Master on behalf of the cattlegate owners, and this would support the claim to ownership.

More significant is a list of persons headed "Owners of Flaxton Green" which appears in the Minute Book in the pages containing the minutes of a meeting held on 2 May 1891. The first column is headed "Owners in 1844 from Tithe Award", and the second column "Owners in 1891". Against each name is a figure ranging from $\frac{1}{2}$ to 3, the total of which is shown in both columns as 34: having regard to the other evidence, I think it is reasonably clear that each figure represents the proportionate share of each owner.

The question whether cattlegate owners are at the same time owners of the land itself is not an easy one, dependent as it is on records and documents of the past, and having regard to the fact that throughout long periods the question of ownership of the soil was of no great importance, so as to require investigation and distinctive recognition. In the present case I am of opinion that the evidence does indicate that gate owners were also owners of the land in shares proportionate to the number of the gates and accordingly that the claim to such ownership on behalf of the cattle gate owners succeeds. This however is not the end of the matter: in determining ownership, I am concerned to ascertain the ownership of the legal estate in the land. Where, as in the view which I take is the position in this case, there were on the 1 January 1926 undivided shares in land the Law of Property Act 1925 contained provisions as to the vesting of the legal estate. Those provisions are in the First Schedule to that Act, Parts IV and V, the applicable provision being in my view para 2 of Part V, which provides that in the case of an open space held in undivided shares which entitle each owner of a share to rights of access and user, the ownership vests in the Public Trustee, and the rights of access and user by the owners of shares are to continue. It is unnecessary for the purposes of my decision to ascertain who are the present owners of cattlegates and shares.



In accordance with my decision I shall direct the North Yorkshire County Council, as registration authority, to register the Public Trustee as the owner of the Unit 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

22 July

1982

L. J. Morris Smith

Commons Commissioner

