



COMMONS REGISTRATION ACT 1965

Reference No.45/D/10

In the Matter of Roundhill, Threshfield,
Yorkshire (West Riding)(No.2).

DECISION

This dispute relates to the registration at Entry No.1 in the Rights Section of Register Unit No.C.L.94 in the Register of Common Land maintained by the West Riding of Yorkshire County Council and is occasioned by Objection No.101 made by Mr. Charles Kitching and noted in the Register on 15th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Skipton on 20th June 1973. The hearing was attended by Mr. R.S. Harland, a member of the Threshfield Parish Council, which applied for the registration, and by Mr. Colin Reeder, solicitor on behalf of Mr. Kitching.

Mr. Harland argued as a preliminary point that the Objection would be invalid if Mr. Kitching were not the owner of the land in question and that I ought therefore to start by investigating Mr. Kitching's claim to be the owner of part of the land and only proceed to consider his Objection if he could satisfy me as to his ownership.

In my view Mr. Harland's point is ill-founded. There is nothing in the Commons Registration Act 1965 which limits the making of objections to persons who have a proprietary interest in the land comprised in a Register Unit. I accordingly hold that Mr. Kitching is entitled to object to this registration whether or not he is the owner of the land or of any part of it.

The modern history of the land the subject of this reference goes back to the Inclosure Award, dated 18th October 1827, made under the Burnsall, Threshfield and Skirethorns Inclosure Act of 1815 (45 Geo.III, c.66(local and personal, not printed)). The south-western portion of the land consists of an area described in the Award as "Quarry No.7". The remaining portion of the land consists of part of an area No.8 allotted to the Trustees of Menwith Hill School.

"Quarry No.7" was part of the ground not exceeding 2 acres upon the stinted pasture called Threshfield Malham Moor which the Commissioners were required to set out for the purpose of persons having allotments on the pasture getting limestone and burning the same into lime there or elsewhere not only for the use of their allotments but for any other purpose in the township of Threshfield and Skirethorns but not elsewhere so that such proprietors were restricted from getting any stones or burning the same into lime for the purpose of giving, selling or exchanging the same to or with any other person.

In my view the rights so given to the owners of the allotments were rights of common. There is no evidence that these rights have been exercised within



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living memory. On the other hand, there is no evidence regarding the cessation of the exercise of these rights from which I can draw the inference that they have been abandoned. I must therefore hold as a matter of law that the rights still exist.

This, however, does not conclude the present dispute. The registration is not in the name of any owner of an allotment on the pasture called Threshfield Malham Moor, but in the name of "The Householders of Threshfield acting by Threshfield Parish Council". It may be that some of the persons entitled to the rights created by the Award are householders in Threshfield, but they are not so entitled in their capacity as householders. The right which has been provisionally registered is not, in my view, a right which was created by the Award.

So far as the remaining and much larger portion of the land in the Register Unit is concerned, it was clearly not subject to any rights of common by virtue of the Award. There was some evidence that in recent times people living in Threshfield have collected rockery stones and pea sticks from it from time to time. Since inhabitants as such cannot be entitled to a right of common, I am not satisfied that it has been proved that this portion of the land is subject to the right of common which has been provisionally registered.

For these reasons I refuse to 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 10th day of September 1973

Chief Commons Commissioner