



COMMONS REGISTRATION ACT 1965

Reference nos. 27/D/24
 27/D/25
 27/D/26-27/D/27
 27/D/28
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 27/D/37

In the Matter of Wark Common,
 Carham, Berwick upon Tweed, District,
 Northumberland.

DECISION.

These 14 disputes relate to the registration at Entry No. 1 in the Land section of register unit No. CL.22 in the register of Common Land maintained by the Northumberland County Council and are occasioned by the objections numbered and made by the persons specified in the schedule hereto. All these objections were noted in the Register on 6 June 1969, and the grounds of objection were (all the same): "that the land in question was not Common Land at the date of registration and that the persons detailed in the attached rider are the joint owners of the land and have exercised full rights of ownership without the existence of any common rights vested in any other person". The rider listed the names and addresses of 15 persons being the 14 objectors mentioned in the schedule hereto (Mr. W.S. Cook being stated to have 2 shares and Mr. T. Brown being stated to be secretary) and Mr. Robert Swan of Swan Rest, Wark.

I held a hearing for the purpose of inquiring into these disputes at Berwick upon Tweed on 10 July 1974 and 17 June 1975. At the 1974 hearing Carham Parish Council were represented by Mrs. Coltherd their clerk (also Objector No.5) and by Mr. J.B. Barr their vice-chairman; both gave evidence as summarised below. At the hearing doubts were expressed as to whether all the persons named in the schedule hereto and those who might claim under them, had had proper notice of the hearing; accordingly a letter dated 12 August 1974 was sent by the Clerk of the Commons Commissioner, addressed to all of them giving each an opportunity of applying for the proceedings to be adjourned.

pursuant to one of these letters Mr. Victor H. Ansell in a letter dated 21 September 1974 and signed by him as "secretary" requested an adjournment in order that evidence may be heard in support of the objections; he stated certain changes in ownership (summarised in the schedule hereto) and the reasons (summarised below) for the objection; the letter was countersigned (in respect of the objection nos mentioned) by (1) G. Bolam (2) M.I. Winter (3) T. Coxon (4) K.D. Wightman (5) M.I. Coltherd, (6) W.J. Cook, (7) E. Brown, (8) R. Dunn, (10) R. Coxon, (11) George Ford, (12) A.D. Mole, and (15) E. James. At the 1975 hearing (1) the Parish Council were represented by Mr. W.S. Davidson their chairman, and Mrs. M.I. Coltherd their clerk, and (2) Mr. George Ford of Tweed Bank Wark, (Objector No.11) attended in person. Just before the hearing I received a letter from Mr. Ansell saying he was unable to appear as he had been laid low by illness.

At the 1974 hearing, Mrs. Coltherd who has lived in the village all her life (apart from the war years; she is 50 years of age) said in effect:- The land ("the unit land") comprised in this Register unit contains about 19 acres. The village is about 1 $\frac{1}{2}$ of a mile to the north. The unit land was given to the village to graze their cows. Before and up to the 1939-45 war it was so



grazed along with some road verges (all registered as common land under Unit No. CL. 72) The cows were taken from the village by a cowherd to graze the verges and the Unit Land; at one time there was as many as 20 cows; in the village there was a shed where the cows were kept at night. The grazing does not go on now. Her understanding is that each person in the village has in his deeds a right to graze one cow. Mr. Barr who has lived at Pressen Farm (about 3 miles to the south) all his life (46 years) said (in effect):- He confirmed what Mrs. Coltherd had said. The Unit Land is grass land fenced in on all sides, and locally known as Wark Common Close. The common lands round the village had been inclosed in the 1790's; the Unit Land was then left uninclosed so that the village should have somewhere to graze. At that time the Unit Land and the surrounding common lands were owned by the Tankerville family; afterwards these lands passed to the Grey family; they had a sale in the year 1921 at which his (Mr. Barr's) father bought his present farm.

The Carham (Wark Common) Inclosure Act 1797 (37 Geo.3. c.cxxii) after reciting (among other things) "there is a certain Common Moor or Tract of waste ground commonly called and known by the Name of Wark Common containing one thousand three hundred and fifty acres or thereabouts, lying wholly or partly within the Barony of Manor of Wark in the parish of Carham in the county of Northumberland...the Right Honourable Charles Earl of Tankerville is Lord of the said Barony or Manor of Wark, and as such is entitled to the Ground and Soil of all waste ground lying within the said Barony or Manor..., provided (among other numerous sections) as follows:- AND WHEREAS the Occupiers of Several Cottages situate and being in within and upon the Estate and Lands of Wark, belonging to the Earl of Tankerville, have exercised and enjoyed a Right of Depasturage upon the said Common Moor or Tract of Waste Ground, Be it further Enacted, that the said Commissioners or any two of them (after the necessary Highways and Roads, Common Quarries and Watering Places as aforesaid, shall have been deducted set out and appointed) shall and they are hereby authorised and required to assign, set, out allot, and appoint for or in respect of the said cottages, or such of them as are entitled to Rights of Common in One entire Lot or Parcel such Part of proportion of the said Common Moor, or Tract of Waste Ground, as in the judgement of the said Commissioners shall be held and considered to be a fair, just and proportionate share of the same Common, in proportion to the value of the said Cottages and their Appurtenancies, for and in Lieu, and Satisfaction of such Right of Depasturage as the Occupiers of the said Cottages have or are entitled to in and upon the said Common which allotment after the same shall be set out as aforesaid shall for ever thereafter be held and enjoyed by the Occupiers of the Said Cottages in Common in like Manner as if this Act had not been passed into law".

The reasons for Objections set out in Mr. Ansell's letter of 21 September 1974 were as follows:- "The Land was used exclusively by the Cottagers in accordance with the Wark Common Inclosure Award..., extract of such award reading:- "The said allotment shall forever thereafter be held and enjoyed etc". This use was enjoyed until approximately 40 years ago, when the field was rented to Mr. T. Thorburn, Wark Common Farm and upon his death the tenancy passed to his son, Mr. T. Thorburn who still continues to pay an annual rent, which is divided amongst the interested parties...."



At the 1975 hearing Mr. Ford (or Mrs. Ford on his behalf) said in effect: He had a bundle of papers relating to the objections; he had obtained these from Chas. Percy & Son, solicitors of Alwick, who had in this matter acted for Mr. Brown in the making of the objections; such objections had been organised by Mr. Percy. From this bundle Mr. Ford produced an extract from the Wark Common Inclosure Award 1799 (apparently from Northumberland County Record Office) which extract was as follows:-

"And we do hereby assign set out allot appoint and Award unto the said Earl of Tankerville for and in respect of the said several cottages situate and being in within and upon the Estate and Lands of Wark belonging to the Earl of Tankerville or such of them as are entitled to Rights of Common in and upon the said Common Moor or Tract of Waste Ground Eighteen Acres and Twenty Perches in one entire Plot or Parcel as the same is staked out and delineated in the Plan hereto annexed and situate at or near a Place called Bryan's Fauld bounded by a Part of the said Common hereinafter allotted to the said Earl of Tankerville on or towards the East by another Allotment awarded to the said Earl of Tankerville on or towards the west by Wark Road on or towards the North and by Learmouth Road on or towards the South which said Plot or Parcel We do hereby declare to be within the Township of Wark, and the same is in our Judgement a fair just and proportionate share of the said Common in proportion to the value of the said Cottages and their Appurtenances, and is in Lieu and Satisfaction of such Right of Depasturage as the Occupiers of the said Cottages have or are entitled to in and upon the said Common And we do hereby order and Award that the said Allotment shall forever thereafter be held and enjoyed by the occupiers of the said Cottages in Common as by the said Act is enacted and directed And we do order award and direct that the occupiers of the said Cottages shall within twelve calendar months from the date hereof make and erect and forever thereafter uphold maintain and repair good and sufficient Bounder Hedges of Fences on the West North and South Sides thereof".

Mr. Ford said (in effect):-The Unit Land cannot be common land such as could be used by everybody or such as could be grazed by anyone in the Village, because it is fenced in and because under the above quoted allotment it was only to be grazed by particular cottagers. The Unit Land is owned by the owners of the cottages mentioned in the 1799 Award; they are the persons who have been registered as owners and who have made the Objections now under consideration.

The Unit land is now let to the person who farms Wark Common Farm (land of which surrounds the Unit Land); the present legal position is unsatisfactory, because some local persons were not sure whether the rents so received could be divided among the owners of the cottages.

Mr. Davidson said (in effect):-Before the Parish Council registered the land as Common land, they advertised their intention and invited objections at a meeting; nobody attended the meeting to object. It might perhaps have been better if the grazing rights had been registered as rights of common (the Rights Section of this Register Unit is blank) because it might be then clear that that land was registered not with a view to it becoming available for use by everybody, but for the purpose of preserving the rights of the cottagers entitled under the 1799 Award.

I have on this reference no power to direct a registration in the Rights Section of the rights of depasturing granted by the 1799 Award under the 1796 Act. In the Ownership section each of the 14 persons registered as owner is in column 3 described as "co-owner" and in column 4 each Entry is said to relate to "the whole of the land comprised in this Register unit". The 1965^{Act} contemplates registration of Ownership of the legal estate, in fee simple; because since the Law of Property Act 1925, 14 persons cannot own a legal estate in undivided shares, I feel some doubt about the regularity of these Entries in the Ownership Section. However this maybe, I



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am on this reference limited to considering whether the registration in the Land Section was properly made, and if I decide that it was, I have no power to give any direction as to the entries in the Ownership Section, or as to the effect such registration may have.

By section 22 of the 1965 Act "common land" is defined as meaning "(a) land subject to rights of common... and (b)...". On 24 April 1968, when the registration in the Land Section was made, the Unit Land was, I think clearly, subject to rights of common under the above quoted allotment made by the 1799 Award under the 1796 Act. Even assuming (of which I am not satisfied) that the 14 persons who are now registered as owners were then owners of the Unit Land, and were then the persons entitled to graze under the 1799 Award, the right under the Award which each had to graze was over the entirety of the land, and was therefore different from a 1/14th share of the ownership; so notwithstanding such ownership the land would still be within the definition. The non-registration of the rights of grazing before 31 July 1970 (the last date for registering a right of grazing existing in 1968) cannot affect the validity of a registration properly made in 1968.

For these reasons I confirm the registration without any modification.

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.

SCHEDULE

Objection No. and File Reference.	Name of Objector and address stated in objection.	Changes mentioned at the hearing on 10 July 1974 or in the letter of 21 September 1974.
1. D/24	Mr. Alan Peter George Perfect of Waterside House, Wark.	Mr. Perfect died in about 1970. Present owner Mr. George Bolam.
2. D/25	Mrs. Mary Winter of Orchard Cottage Wark.	
3. D/26	Mr. Thomas Coxon of Wark.	
4. D/27	Mr. John Joseph Robinson of Thomson Cottage, Village Road.	Present owner: Mr. Kenneth Desmond Wightman.
5. D/28	Mrs. Margaret Isabella Coltheard of Wark.	
6. D/29	Mr. William Scott Cook, of Wark.	Mr. Cook had rights in respect of two cottages; one of these is now owned by Mrs. James, see below.



7.
D/30 Mr. Thomas Brown of Loan View, Wark. Mr. Brown died 1974. Present owner his widow Mrs. E. Brown.
8.
D/31 Mr. Richard Durn of Comptons Cottage.
9.
D/32 Mr. John Alexander of Cheviot View, Wark.
10.
D/33 Mr. Robert Coxon of Hollies, Wark.
11.
D/34 Mr. George Ford of Tweed Bank, Wark.
12.
D/35 Mr. Alexander Davidson Mole of Worcester Cottage, Wark
13.
D/36 Mr. George Ford of Main Road, Wark. Mr. Ford is now dead. Present owner is Mr. R. Harrison.
14.
D/37 Mr. Robert Ian Stevenson of Cottinglea, Cottingwood Lane, Morpeth Mr. Stevenson owns Glen Cottage Wark. Present owner Mr. Victor Horace Ansell.
- (15.) Mrs. Eve James of the Post Office Wark owns one of the cottages in respect of which Mr. W.I. Cook made his objection.

Dated this 25th —

day of July — 1975

a. a. Baden Fuller

Commons Commissioner.