



COMMONS REGISTRATION ACT 1965

Reference Nos 45/0/350  
45/0/351

In the Matter of (1) part of Heath Common  
and (2) part of Warmfield Common, Warmfield  
cum Heath, Wakefield District, West Yorkshire

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DECISION

These disputes relate to the question of the ownership of lands being (1) part of Heath Common and (2) part of Warmfield Common, both in Warmfield cum Heath, Wakefield District and being the lands comprised in the Land Section of Register Unit (1) No CL. 449 and (2) No CL. 450 in the Register of Common Land maintained by the West 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 the Trustees of Mrs D N Gray claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Wakefield on 7 April 1976 and at London on 15 June 1976. At the April hearing (1) Warmfield cum Heath Parish Council were represented by Mr R C Hebden their chairman and (2) The Royal Bank of Scotland Limited ("the Bank"), who are the present trustees of the Heath Estate formerly owned by Mrs D N Gray (now deceased) were represented by Mr J H Milne their Agent. At the June hearing the Bank were represented by Mr H Palmer solicitor with Gregory Rowcliffe & Co Solicitors of London. Mr Hebden is interested also in these proceedings as the applicant for the registration at Entry Nos 2 and 3 in the Rights Section of rights to graze the CL. 449 land (there are two other Entries in such Section) together with the land (the rest of Heath Common) comprised in Register Unit No CL. 5.

Mr Milne in the course of his evidence said (in effect):- The CL. 449 land is a triangular piece (according to the Register it contains 0.8 of an acre) part of Heath Common containing 100 acres and upwards; the Estate surrounds the Common; it is all shown as part of the Estate on the plan in his office. He had applied for the registration under the 1965 Act of the Bank as owner of the rest of Heath Common, but had omitted the CL. 449 land because he had mistakenly referred to a plan which he subsequently had discovered was not correct. Heath Common is regulated by a scheme made under the Commons Act 1899 by Wakefield Rural District Council and by Bye-laws made under such Scheme. Of the CL. 450 land (according to the Register it contains 0.6 of an acre), only the part south of the line PQ drawn by him on my copy of the Register map is shown on the said Estate plan as being in the ownership of the Estate (this part is about 1/5th of the whole). He understood that the part northeast of the PQ line had been dedicated by the Estate for highway purposes; he thought this dedication had perhaps caused some confusion as to what was common land. The Bank has been registered under the 1965 Act as the owner of the rest of Warmfield Common.



Mr Fickersgill, who was attending the proceedings for the purpose of representing West Yorkshire County Council as registration authority, produced a dedication dated 25 October 1947 and signed by Mrs D N Gray by which she as Lord of the Manor and on behalf of the Commoners of Warmfield Common agreed that the land shown on the plan should be dedicated to the use of the public in connection with the construction of a new roadway over Warmfield Common; the plan showed the dedicated land as including most of the land north of the PQ line. He said that the new roadway had been constructed; the land described in the 1947 dedication was rounding off a corner.

Mr Hebden said that he had known the CL. 449 land and the CL. 450 land for 60 years, and they had always been part of the respective Commons.

At the June hearing Mr Palmer produced: (1) a conveyance dated 2 August 1930 by which the Heath Estate was conveyed by E F V Viscount Halifax with the concurrence of his Trustees to Mrs D N Gray, (2) probate of her will (she died 2 February 1953), (3) an assent by her personal representatives in favour of Mr E F Gray, (4) probate of his will (he died 21 June 1960) granted to Royal Bank of Scotland, and (5) a copy of an order of the Court of Session and of a certificate of incorporation by which the property passed to The Royal Bank of Scotland Limited. The plan on the 1938 conveyance showed the whole of the CL. 449 land and the part south of the PQ line of the CL. 450 land coloured pink and as being "surface and minerals" comprised in the conveyance, but showed that the land north of the PQ line (along with other lands apparently roadways) coloured purple as being "minerals, other owners of surface".

On the evidence summarised above, I conclude without hesitation that the Bank are the owners of all the CL. 449 land and that part south of the PQ line of the CL. 450 land. The position of the part north of the PQ line is somewhat confused; the 1947 dedication if it was effective (and it appears to have been effective) is some evidence that Mrs D N Gray was then the owner; but if it was effective, the land so dedicated was being highway outside the definition of "common land" in section 22 of the 1965 Act and should therefore not have been registered as common land. Having regard to Mr Hebden's statement as recorded above, and to the size of the CL. 450 land, and to the statement in the 1938 conveyance that the plan annexed thereto was "for the purposes of identification not of conveyance" I can I think properly conclude that the whole of the CL. 450 land (surface and minerals) was thereby conveyed and that accordingly the Bank as successor in title of Mrs D N Gray is now the owner.

For the above reasons I am satisfied that the Bank are the owners of the CL. 449 land and of all the CL. 450 land, and I shall accordingly direct West Yorkshire County Council as registration authority to register The Royal Bank of Scotland Limited of Charing Cross, London as the owners of the lands 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 this 16<sup>th</sup> day of June -

1976

a. a. Adam Fuller