



COMMONS REGISTRATION ACT 1965

Reference No 45/U/194

In the Matter of Inchfield Pasture,  
Todmorden, Calderdale Borough, West  
Yorkshire

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DECISION

This reference relates to the question of the ownership of land known as Inchfield Pasture, Todmorden, Calderdale Borough being the land comprised in the Land Section of Register Unit No CL. 407 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 (1) Mr S Rowe (the applicant for Entry No 3 in the Rights Section) claimed that the land in question is owned by "the Freeholders" (he being their Secretary), (2) West Riding County Council pointed out that the land may vest in the Public Trustee under the provisions of (the First Schedule to) the Law of Property Act 1925, (3) Calderdale Water Board (the applicants for Entry Nos 4 and 5 in the Rights Section) claimed that the land is in the ownership of a number of persons and bodies who own undivided shares in the land known as cattlegates (the Board own a number of these undivided shares), (4) Mr Tom Knowles and Mrs Clarice Knowles as joint owners of Pasture Side Farm and the Heys claimed that (in conjunction with others) they are the freehold owners of the land, and (5) Mr J Feber of Inchfield Farm claimed 5 gates. No other person claimed to be the owner of the land or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Halifax on 6 April 1976. At the hearing (1) Yorkshire Water Authority (successors of Calderdale Water Board), (2) Mr J Feber, and (3) Mr S Rowe were all represented by Mr J S S Bastian solicitor of Clarksons, Solicitors of Halifax.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) 193.2 hectares (477.6 acres). It is about 2 miles southwest of Todmorden, its southeast corner being about  $\frac{1}{2}$  a mile from Walsden, and its north side being near the Bacup Road (A 681). From its northwest and north boundary (along or near Gorphey Reservoir, Gorphey Clough and Midgelden Brook) the Unit Land slopes up towards the high ground on the west and southwest. There are no buildings (except electricity pylons) on the Unit Land, and over it have been registered in the Rights Section 9 rights to graze (altogether amounting to) 688 sheep or 130 cows/beasts (in 4 of the Entries said to be gaits: 20 sheep = 3 cattle = 1 gait) and one right of turbary and estovers.



Mr Bastian claimed: (1) a small part ("the Southwest Piece") of the Unit Land, being a hatchet-shaped area having a length of about 150 yards and a width (at the wide part of the hatchet) of about 30 yards under a deed poll dated 30 December 1900 and made by the Mayor Aldermen and Burgesses of the Borough of Todmorden under the Todmorden Corporation Act 1890 is now vested in Yorkshire Water Authority as successors of the Todmorden Corporation; and (2) the remainder of the Unit Land is now vested in the Public Trustee under the provisions of the Law of Property Act 1925 relating to land before that Act held in undivided shares. Towards the end of this decision I deal particularly with the Southwest Piece; until then, I use the words "Unit Land" as including or not including such Piece as the context may require.

Mr S Rowe, who is now and has been since 1958 Secretary of "the Freeholders", in the course of his evidence produced a list of the present Freeholders and the minute books of their meetings (the first entry in the book currently in use is dated 1862). Mr C Wilson who is consultant solicitor with the Yorkshire Water Authority and has on their behalf investigated the history of the Unit Land produced: (1) a booklet (from Leeds Public Library) printed in 1913 for the Chetham Society entitled Survey of the Manor of Rochdale made in 1626, edited by H Fishwick, (2) a press cutting of a letter entitled "Inchfield Pasture and Moor", dated 15 May 1894 and written by Mr J Travis to the Todmorden Advertiser; (3) the said 1900 deed poll, and (4) a deed of confirmation dated 30 July 1902. Mr I M Argyle, who is assistant in the Technical Records Section of Yorkshire Water Authority, produced a plan ("the IMA plan") on which he had from the 1900 deed poll delineated the Southwest Piece.

Mr Rowe said (in effect):- His knowledge of the grazing of the Unit Land was derived from the records in his possession as Secretary and because he knew almost everybody concerned. There were now he believed 59 gates, and they were attached to the same farms as they had always been.

Mr Bastian in support of his claim that the gate owners each owned an undivided share in the Unit Land relied on:- (a) The continued use in the Minute Books of the words "the Freeholders" as descriptive of those who grazed the Unit Land. (b) The claim recorded as having been made in 1626 and apparently accepted by the Attorney General on behalf of His Majesty who was then Lord of the Manor as set out in the First Schedule hereto. (c) An indenture dated 2 February 1709 and abstracted by Mr Travis in his 1894 letter by which the certain pastures were apparently regulated by persons who are therein recited as then being "each...legally seised...and in some part...of the soyle and turbage as well of a certain close... called Ox Pasture...containing 300 acres...as also another close or pasture of ground called the Sheep Pasture in Inchfield aforesaid containing... 400 acres...". And (d) the recitals in the 1900 deed poll that "the rights in and to the soil of the said land called Inchfield Pasture and the Commonable and other rights in and over such land and the fee simple thereof in possession are vested in or belong to or are believed to be vested in or belong to the Commoners".

I accept Mr Bastian's contention that the pastures in these documents are the same as or include the Unit Land.



That a gated or stinted pasture, which originated under an award made under the Inclosure Act 1841, and the ownership of which is by section 116 vested in the commoners was by the Law of Property Act 1925, Schedule I Part V vested in the Public Trustee was I think established by re Cotherstone, a decision of the High Court reported in the Estates Gazette of 1 July 1961; and I have under section 8 of the 1965 Act directed the Public Trustee to be registered as owner of such a pasture not only as regards the Cotherstone (Durham) but also as regards land at Whipsnade (Bedford), see decisions dated July 1975 reference 211/U/4 and dated 21 November 1975 reference 201/D/10. In my opinion such a pasture, being a pasture in respect of which each commoner has a combined soil and grazing ownership can exist apart from section 115 of the 1845 Act, see my decisions re Longton (Lancashire) dated 15 July 1974 reference 20/U/81 in which I set out the legal principles which I think are applicable; and I have since given similar decisions in respect of other land, see re Ireshope (Durham) dated 10 October 1974 reference 11/U/19, re Bethacar (Cumbria) dated 23 July 1975 reference 20/U/94 and re Thornham (Norfolk) dated 18 December 1975 reference 15/D/79-95. I need not I think repeat in this decision the legal principles which I set out in the decisions above referred to; I need only say that upon the consideration made by Mr Bastian as summarised above, I am satisfied that the Unit Land is now and has at all relevant times been pasture in respect of which the commoners had combined grazing and soil ownership, and that accordingly for the reasons set out in such decisions, the estate in fee simple in the land by the operation of the provisions of the 1925 Act relating to land held in undivided shares became vested in the Public Trustee.

Having become so vested, in my opinion the ownership is still vested in the Public Trustee. However I should record that there was no evidence that he has ever been asked to act, and it may well be that he will never be asked to act.

I am not concerned with the question which may arise as to whether any gate-owner who failed to register under the 1965 Act any right of common will by the 1965 Act be prejudiced in the exercise of any rights he may have as owner or former owner of an undivided share.

As to the Southwest Piece:- The 1900 deed poll shows that under compulsory purchase procedure the pieces of land both part of Inchfield Pasture and containing about 15 acres and about 2½ acres were acquired by the Todmorden Corporation for the protection of their waters and for water-works purposes. Mr Argyle identified the Southwest Piece as being included in one of the two pieces so acquired and contended (rightly I think) that Yorkshire Water Authority as successors of the Corporation are now the owners of the Southwest Piece.

For the above reasons I am satisfied that Yorkshire Water Authority are the owners of the Southwest Piece and that the Public Trustee is the owner of the remainder of the Unit Land, and I shall accordingly under section 8(2) of the Act of 1965 direct the West Yorkshire County Council as registration authority to register Yorkshire Water Authority as the owner of that part of the land comprised in this Register Unit which is delineated on the IMA plan ( I shall annex a copy of this plan to my direction) and to register the Public Trustee as the owner of the remainder of the land.



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

Survey of Manor of Rochdale 1626  
(edited by H Fishwick, 1913)

Extract page 144

A large close of Pasture being occupied by the Inhabitants of Inchfield called the ox-pasture and stinted as is formerly mentioned in each tenants particular and containing 480a. Or. 10p. and 60 beaste gates att 5.s each encroached out of the Waste 480a. Or. 10p. £15 Os. Od.

a. r. p. £ s. d.

Another large Parcell of Common lying open to the Waste and claymed onlie by the Inhabitants of Inchfield called Inchfield out pasture containing 284 0 0 4 10 0

Another parcell of Waste grounde lying open claymed by the said Inhabitants of Inchfield to be parcell of there said Pasture last before mentioned containing ... .. 24 0 0 0 8 0

Common in toto 308 1 0 4 18 0

Memorandum that the Freeholders of Inchfield doe claym this large Wastes before mentioned solely to the Inhabitants thereof affirminge the same to have been used by them and their auncestors as stinted pastures and that the single Wastes have been auntiently severed from all the other Commons heretofore adjoininge by a Ditch & a wall which all this time can scarcely bee discovered in any place, yet they suppose they may enclose anie parte thereof by mutuall agreemente betweene themselves.

They have no auntient deedes to manifeste the usage of this Pasture but only prescription. There is an old Deede which hath noe date belonging to James Fielding of the Hades wherein John de Ealand doth grant unto Richard de Ayam for his homage & service & for a certain some of money to him in hard payd - Quanda' part' terre que vocat... sicut infra... continet'. Hend' et Tend' de d' octo Joñe et heredz suis ex su uxore... ptinen libere quiete integre et heredita cu' comminum' pastur' et oibz esiamen' tante terr' in vill de Honorsfelt ptin<sup>z</sup> except pastur inter Todmerdene et Romsdene Brane p Rex vid. annual' p oibz serviciis. Upon which deed the Inhabitants of Inchfield doe infer that the Pasture soe by Ealand excepted is Inchfield Pasture which they nowe occupie and that a principio it hath been a distinct thinge by itselife with out anie man's clayme of interest therein but the Inhabitants of Inchfield 1626.

Dated this 27<sup>th</sup> day of May —

1976

*C. A. Boston Fuller*

Commons Commissioner